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1 SACRAMENTO, CALIFORNIA, AUGUST 31, 1999 - 9:30 A.M.

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3 CHAIRMAN EATON: Good morning, everyone,  
4 and welcome to today's meeting of the CIWMB. I see we  
5 have a full crowd. Always good to see some old faces that  
6 decided to come back and pay a visit. We welcome you  
7 today and look forward to hearing from you.

8 Madam Secretary, would you please call the  
9 roll.

10 BOARD SECRETARY: Board Members Jones.

11 BOARD MEMBER JONES: Here.

12 BOARD SECRETARY: Moulton-Patterson.

13 BOARD MEMBER MOULTON-PATTERSON: Here.

14 BOARD SECRETARY: Pennington.

15 BOARD MEMBER PENNINGTON: Here.

16 BOARD SECRETARY: Roberti.

17 BOARD MEMBER ROBERTI: Here.

18 BOARD SECRETARY: Chairman Eaton.

19 CHAIRMAN EATON: Here.

20 For those of you who have a firm grasp of  
21 the obvious, we just called the roll, and you will notice

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22 we have a new Board Member, Linda Moulton-Patterson. On  
23 behalf of all the Board Members, I would like to welcome  
24 you, Linda, and look forward to working with you, and if  
25 you would like to say a few words, please feel free to do

1 so at this time.

2 MS. MOULTON-PATTERSON: Thank you very  
3 much, Chairman Eaton.

4 I would just like to say that I am very,  
5 very pleased to be Governor Gray Davis's first appointment  
6 to the Integrated Waste Board, and I look forward to  
7 working with everyone here, the staff and my colleagues.  
8 I feel very honored to be in such company, and I look  
9 forward to working with members of the public.

10 Thank you very much.

11 CHAIRMAN EATON: Thank you. All right,  
12 Members, before we begin on the ex partes, for some of you  
13 who may not have been here recently, and some of you who  
14 have been here recently, and for those of you who are here  
15 for the first time, in the back of our room we have some  
16 slips of paper which are speaker slips. If you care to  
17 speak on any item on today's agenda or during the public  
18 comment period at the end of today's agenda, if would you  
19 kindly fill out one of the forms and mark the agenda item  
20 or the public comment item you wish to speak to and bring  
21 it up to my left and to your right, generally, to Lisa

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22 Dominguez, and she'll make sure we get your name on the

23 agenda and give you sufficient time on the appropriate

24 agenda item number, if you wish to comment on any item.

25           Having said that, I'll start with my left.

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1 Mr. Pennington, any ex partes to report today?

2 BOARD MEMBER PENNINGTON: Yes,

3 Mr. Chairman. I had a phone conversation with Yvonne

4 Hunter. I had a letter from the California Mining

5 Association from Denise Jones. I spoke with Denise

6 Delmatier and Don Gamble. I spoke with Chuck White and

7 Ken Stoddard, and I also met with Bob Houston.

8 BOARD MEMBER JONES: Mr. Chairman, all mine

9 are up to date with the exception of the letter from

10 Denise Jones from the California Mining Association, which

11 I received this morning.

12 CHAIRMAN EATON: Okay.

13 Ms. Moulton-Patterson.

14 MS. MOULTON-PATTERSON: I also have the

15 letter from Denise Jones, and I'd like to report that I

16 spoke with Alma Ranow, Terri Lavelle, Yvonne Hunter and

17 Justin Milan, and it was in the way of a congratulations

18 and meeting them.

19 Thank you.

20 CHAIRMAN EATON: Thank you.

21 Senator Roberti.

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22 BOARD MEMBER ROBERTI: Yes, Mr. Chairman.

23 Yesterday I met with Senator Wesley Chesbro regarding

24 expansion of the RPPC program and construction and

25 demolition and Board administration, and I spoke with Evan

1 Edgar regarding ADC policy, and I don't have the date on  
2 that. The 17th of this month.

3 CHAIRMAN EATON: And that's it? Okay.

4 And I have a couple. I got a letter from  
5 Steve Arthur from the Department of Conservation regarding  
6 C&D regs; another correspondence from James Kinninger  
7 regarding the Tahagus Landfill. I spoke with Denise Jones  
8 this morning, just a meet-and-greet; Alma Ranow,  
9 meet-and-greet; and Ken Ehrlich I spoke to last evening  
10 regarding C&Ds and a meet-and-greet this morning.

11 Members, any oral reports that anyone would  
12 care to present to the audience?

13 BOARD MEMBER PENNINGTON: Not from me,  
14 Mr. Chairman, other than we had a pleasant time in Quincy.

15 CHAIRMAN EATON: Got out before the fires.

16 BOARD MEMBER PENNINGTON: Got out before we  
17 got smoked out.

18 CHAIRMAN EATON: Mr. Jones, anything?

19 BOARD MEMBER JONES: Just a quick one. Don  
20 Dyer and I held at Granlibakkan an LEA workshop and had a  
21 pretty good meeting with LEAs on landfill operator

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22 certification issues.

23 CHAIRMAN EATON: All right. Any other

24 reports or comments?

25 BOARD MEMBER ROBERTI: No.



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1           CHAIRMAN EATON: Okay. Thank you.

2           Mr. Chandler, before we begin, I know that  
3 you're going to say some words today about one of our  
4 employees, also another employee who is going to be  
5 leaving -- two employees actually. And I know the Board  
6 has concurred in at least your recognition of them, so  
7 I'll turn it over to you at this time.

8           MR. CHANDLER: Thank you, Mr. Chairman.  
9 Good morning, Members. I do have a resolution I would  
10 like to present to an individual who has served in an  
11 extended capacity at the Board in a variety of positions,  
12 and if I could indulge the Board, I would like to go to  
13 the podium now and make that presentation.

14          Dorothy, are you in the back of the room  
15 there? Come on forward. You know how you love these  
16 things. Get them in front of the whole group.

17          This is truly a momentous occasion. It's  
18 the end of a chapter here at the Board for Dorothy Rice,  
19 but the beginning of a new chapter for Dorothy as she  
20 takes on a monumental assignment with the Department of  
21 Toxic Substance Control in management of the State

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22 Superfund Cleanup Program, and I can't think of a better

23 candidate that Director Lowrey could have chosen than

24 Dorothy to take on that challenge.

25 Dorothy, we have a long path together here

1 at the Board, and while I have a resolution here I'm going  
2 to give you here in a minute, I think I would rather just  
3 speak from the heart myself as I reflect my comments on  
4 this important day for you and the Board.

5 Dorothy and I came to the Board pretty much  
6 almost at the same time in early 1991. She was the  
7 Board's first Legislative Director. And I would say  
8 chapter one, the early years of Dorothy's tenure, was to  
9 really establish a foothold for the new legislation that I  
10 was asked to lead the staff on and Dorothy was asked as  
11 its Director to help implement. She did a wonderful job  
12 in that.

13 The middle years, I asked Dorothy to assist  
14 me in the Planning and Waste Prevention arena and she  
15 gladly agreed to come over and help in that area, and  
16 local assistance and waste prevention, an area in which  
17 she dedicated many years and many hours. I was fortunate  
18 enough to snag her from the private sector and ask her to  
19 join me in the Executive Office in the middle years,  
20 '94-'95-'96 time frame, as the Chief Deputy, and we had  
21 many a long working hours. We fought some issues

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22 together, we laughed together, and we cried together. It

23 was some tough times there, but I think we helped move the

24 organization forward.

25           And then when things developed in the

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1 Permitting and Enforcement Division, Dorothy very  
2 gracefully indicated she would serve over there in the  
3 most recent tenure in the P and E area. And I think in  
4 all those capacities your integrity, your willingness to  
5 find the truth in issues, your unrelentless support for  
6 staff, and your desire to always try to find the high road  
7 and the best road for the organization to move forward in.

8           So Dorothy it's with some mixed feelings I  
9 say goodbye today. I have a resolution here that embodies  
10 much of which I just tried to say. I'd like to  
11 acknowledge Karen Trgovcich and the P and E staff for  
12 taking personal time in the last few days to make this  
13 resolution all come together. It is signed by the Board  
14 and myself, and as I said, reflects many of your  
15 attributes that helped bring this organization forward  
16 over the last eight or nine years.

17           Congratulations on all you've done for us,  
18 and I wish you the best in your new endeavor. I know it's  
19 going to be a tough road and an exciting one, and please  
20 come by and see us. We'll all be in the same building  
21 soon.

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22 (Laughter)

23 MR. CHANDLER: Thank you, Dorothy.

24 (Applause)

25 MS. RICE: I know you've got a busy

1 agenda. I just real briefly would like to say thank you  
2 so much. Thank you to Ralph for your kind words and for  
3 the eight years that we worked so closely together. Thank  
4 you, Keith, and thank you, Board Members past and present,  
5 for all your support.

6 I have really enjoyed all the jobs that  
7 Ralph enumerated and that I've assisted with. This has  
8 been a great eight years for me, and I really appreciate  
9 all your support. I look forward to working with you when  
10 I'm over at Toxics. Thank you, staff. I worked with so  
11 many of you I wouldn't presume to start naming names, but  
12 it's been a great pleasure and an honor, and I've learned  
13 so much here. I look forward to continuing to be your  
14 friend and coworker.

15 Thank you.

16 (Applause)

17 MR. MILAN: Thank you, Ralph.

18 Mr. Chairman, Board Members, particularly  
19 you, Ms. Patterson, Justin Milan with the Environmental  
20 Health Directors. I have asked to very briefly commend  
21 Dorothy and wish her well in her new endeavors. The

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22 reason I'm here is because we believe from the Local  
23 Environmental Health and Local Enforcement Agencies that  
24 Dorothy has done an exceptional job. Our simple message  
25 to be very sad to see her leave, but we know we're going



1 to be working with her in Toxics.

2 I think she's combined some attributes that  
3 are hard to find all together in one person -- the  
4 commitment to the job, her extensive experience in this  
5 field, her technical expertise, but also her wisdom.

6 I think she's helped myself, the members of  
7 our Policy Committee, the LEAs, to deal with a lot of the  
8 tricky issues that we've had to face, and she's done it  
9 with wisdom that we really do appreciate.

10 She, with Ralph, embarked on this new idea,  
11 this marriage counseling of the partnership between the  
12 State and the locals, and we applaud her for that and we  
13 hope that we are able to continue this partnership with  
14 the Board and with the other agencies, that we start  
15 working together more closely on to provide an efficient  
16 and effective service.

17 Dorothy, thank you for all you've done for  
18 us. We hope that you do well in Department of Toxics, and  
19 we commit our support to you in that new assignment.

20 Thank you.

21 CHAIRMAN EATON: Thank you.

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22 MS. HUNTER: Good morning. Yvonne Hunter

23 with the League of Cities and I wasn't planning or

24 prepared to do this, but if Justin is going to speak from

25 one segment of the local government level, I have to thank

14

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1 Dorothy, both personally and professionally, from the  
2 League of Cities, and Karen King from CSAC always gives me  
3 her proxy, so from CSAC as well.

4 Dorothy started basically the Legislative  
5 program from the bottom up the year after AB 939 started,  
6 and for those of us who were involved in the early years  
7 of the implementation, it was the best legislative choice  
8 the Board could have made. She's a -- she has a keen  
9 intellect. She understands how to explain complex issues,  
10 tries to reach a mutual ground, and I know of numerous  
11 instances in her various travels through the Board where  
12 she, I think, represented the best in state government.  
13 So it's a loss for the Board. I'm happy that I also get  
14 to do hazardous waste areas, so I get to work with her in  
15 toxics.

16 But on behalf of all of us in local  
17 government who have been fortunate to work with her, and  
18 me personally, we congratulate you, Dorothy. We're happy  
19 that you landed in a place where we can continue to work  
20 with you.

21 Thank you.

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22 CHAIRMAN EATON: Thank you.

23 (Applause)

24 CHAIRMAN EATON: I think Ms. Tobias would

25 like to say something about another loss that our Board is

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1 going to suffer today as well.

2 Ms. Tobias.

3 MS. TOBIAS: Mr. Chair, Board Members, and  
4 our audience today, today Suzanne Small leaves the Legal  
5 Office for the Franchise Tax Board. It's I think a big  
6 loss to the Legal Office, but probably good news for the  
7 Franchise Tax Board and bad news for the tax scofflaws of  
8 the State.

9 (Laughter)

10 CHAIRMAN EATON: Just ask the tire guys.

11 (Laughter)

12 MS. TOBIAS: For those who tangled with  
13 Suzanne in the tire enforcement program, they will  
14 probably be commiserating with those scofflaws. Suzanne  
15 came in and took over the tire program at a time when it  
16 was in its infancy at the Board, and I think is in a small  
17 part a lot responsible for the success of the enforcement  
18 efforts that we've taken on up until this time.

19 Suzanne is exactly the kind of attorney  
20 that we look for in the Legal Office. She is extremely  
21 committed to her clients, and I think a lot of the staff

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22 joins me in bidding her farewell. She has been somebody  
23 who really is open, has an open-door policy for the  
24 programs she represents. She's worked on a number of  
25 programs at the Board, and I hate to even say all of them

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1 because I'm afraid I'll leave somebody out. She's worked  
2 on Household Hazardous Waste, the used oil program, the  
3 2136 program, which I also think she's done a great job  
4 with supporting staff and working on the enforcement  
5 efforts there, the tire program, tire hauler program, and  
6 until about the last year, also did contracts and grant  
7 programs for us.

8           So as you can see, she'll be missed, not  
9 only in terms of the work that she's done for the Legal  
10 Office, but she's also a good part of the sense of humor,  
11 of what there is in the Legal Office.

12           (Laughter)

13           MS. TOBIAS: So things will be a lot more,  
14 I think, calmer in the office, I hate to say boring, in  
15 the Legal Office without Suzanne.

16           So I think it's a real loss to the Board  
17 and I hope that everybody joins me in sending her on to  
18 her new job.

19           (Applause)

20           CHAIRMAN EATON: Mr. Chandler.

21           MR. CHANDLER: And my last announcement,

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22 not to give the impression that it's all good staff

23 leaving the Board. I am pleased to announce that Mark

24 Leary will be joining the Board in the senior management

25 capacity. Mark comes with 11 years of extensive



1 experience in DTSC, more recently five years of experience  
2 with Browning-Perris Industries. Mark will be joining the  
3 Board one week from today, October 7th. We look forward  
4 to his arrival on the management team here at the Board,  
5 looking forward, and that does conclude my report for the  
6 Board this morning.

7 CHAIRMAN EATON: Thank you. Any questions  
8 of Mr. Chandler?

9 I just have one comment. Last week when we  
10 were in Quincy, we went over the tire allocation. At that  
11 time it was our understanding that there would be a letter  
12 that was going to be prepared that would be distributed to  
13 the Members' offices regarding that allocation, prior to  
14 going to legislation and the legislative analyst.

15 So I know today is the 31st. I have not  
16 gotten it in my office and I don't know if any of the  
17 Board Members have. If you could make sure by the end of  
18 the day we have that letter, we would then be able to get  
19 the process going so we can get it there in a timely  
20 fashion and meet our obligation under the budget control  
21 language. A copy of that letter, in addition to the

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22 legislature and the usual executive branch process, should  
23 also go to Mark Newton over at the LEO's office. Of  
24 course the LEO's office is expecting that. So we would  
25 appreciate it if you would get that done today.

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1           MR. CHANDLER: We will do so. Thank you  
2 for the reminder, Mr. Chairman.

3           CHAIRMAN EATON: Okay. Under continued  
4 business items, the RPPC, as you remember, during that  
5 meeting when we did agree to continue that matter until  
6 such time, even though we did get a favorable ruling on  
7 one of our Board Member's ability to participate, we did  
8 agree to kick that over until such time as, I think, later  
9 this month -- not the 7th, I'm sure the 21st, 22nd.

10 Without objection, we will continue that with our previous  
11 direction. Hearing no objection, so shall be ordered.

12           Okay. Next order of business, consent  
13 agenda. We have one item. Would anyone like to pull that  
14 item from the consent calendar or are we free to move that  
15 item?

16           BOARD MEMBER PENNINGTON: Mr. Chairman.

17           CHAIRMAN EATON: Mr. Pennington.

18           BOARD MEMBER PENNINGTON: I'll move  
19 adoption of the consent calendar.

20           CHAIRMAN EATON: You were going to say  
21 massive consent calendar. I know that. The word stuck in

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22 your throat.

23 BOARD MEMBER JONES: I'll second.

24 CHAIRMAN EATON: All right. Mr. Pennington

25 moves and Mr. Jones seconds we adopt the consent calendar

19

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1 which today only consists of Agenda Item A.

2 Madam Secretary, please call the roll.

3 BOARD SECRETARY: Board Members Jones.

4 BOARD MEMBER JONES: Aye.

5 BOARD SECRETARY: Moulton-Patterson.

6 BOARD MEMBER MOULTON-PATTERSON: Aye.

7 BOARD SECRETARY: Pennington.

8 BOARD MEMBER PENNINGTON: Aye.

9 BOARD SECRETARY: Roberti.

10 BOARD MEMBER ROBERTI: Aye.

11 BOARD SECRETARY: Chairman Eaton.

12 CHAIRMAN EATON: Aye.

13 Consent calendar is adopted. All right.

14 Moving to first order of new business, Item

15 Number 2, continuation of public hearing on proposed

16 regulations for the solid waste disposal and codisposal

17 site cleanup program.

18 MS. NAUMAN: Good morning, Mr. Chairman

19 and Members. Julie Nauman, Deputy Director of Permitting

20 and Enforcement.

21 As you will recall, last week when we met

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22 with you in Quincy, you considered an item related to  
23 policy for the AB 2136 program. At that time we reminded  
24 you that we had a regulation package that we had been  
25 working on, and we're prepared to bring that back to you

20

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1 today incorporating the direction that you provided to us  
2 last week, so we have that package before you.

3           It includes the items that you discussed  
4 last week, specifically fire response and emergency, as  
5 well as the cost recovery policy that you adopted some  
6 time ago, and also reflects the program criteria that you  
7 recently adopted and we have been operating under for the  
8 last several months. With that overview, I would like to  
9 ask Scott Walker to review with you the comments that we  
10 have received during the public review and comment period  
11 and review with you the content of the package.

12           Also just a reminder that this package has  
13 been underway for sometime, and in order to meet the  
14 one-year deadline with the Office of Administrative Law,  
15 we need you to take action today so that we can complete  
16 the rulemaking package and submit that by the deadline  
17 which is October 8th.

18           CHAIRMAN EATON: Mr. Walker.

19           MR. WALKER: Good morning, Chairman Eaton  
20 and Members of the Board. Scott Walker, Permitting and  
21 Enforcement Division. To briefly summarize, the AB 2136

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22 program, or solid waste disposal and codisposal site  
23 cleanup program, was created by 1993 legislation which  
24 requires the Board to implement a program for cleanup of  
25 solid waste disposal and codisposal sites where the



1 responsible party either cannot be identified or is unable  
2 or unwilling to pay for timely remediation, and where  
3 cleanup is needed to protect public health and safety and  
4 the environment.

5           The AB 2136 program is implemented through  
6 matching grants to local governments, grants to Local  
7 Enforcement Agencies for illegal dump site cleanup, loans  
8 to responsible parties, and direct site cleanups using  
9 Board-managed contracts. To date, 102 sites have been  
10 approved for remediation, 88 sites have been remediated,  
11 and approximately 11 are in progress.

12           A 45-day public comment period on proposed  
13 regulations to implement the AB 2136 program concluded in  
14 November of 1998. We received four written comments. The  
15 Board conducted a public hearing in consideration of  
16 revisions to the proposed regulations in December of 1998.

17           Again reiterate, the regulations must be  
18 adopted by the Board and submitted to the Office of  
19 Administrative Law no later than October 8th, 1999 to  
20 comply with the Administrative Procedures Act for this  
21 rulemaking.

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22           At the December 1998 public hearing, the  
23 Board directed staff to continue the public hearing in  
24 consideration of revisions pending further discussion and  
25 resolution of policy issues. The three main issues were

1 cost recovery, landfill fires, and emergency response.

2           The cost recovery policy was approved in  
3 June. Policy on landfill fires and emergency response was  
4 approved by the Board in August. The proposed revisions  
5 specifically incorporates the Board's approved policies in  
6 these areas.

7           Another point is that the proposed  
8 regulations will also significantly enhance the Board's  
9 enforcement and cost recovery for the program by providing  
10 a clear definition of "responsible party" consistent with  
11 other local, state and federal authority.

12           In conclusion, staff recommend the Board  
13 approve revision of the proposed regulations and notice  
14 for an additional 15-day public comment period.

15           That concludes staff's presentation.

16           CHAIRMAN EATON: Any questions of staff?

17           I have one, of course. It's 2136. What  
18 would be a day without a question from me?

19           Procedurally, we have a piece of  
20 legislation going through. My understanding is that would  
21 allow loans to others, other than responsible parties, to

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22 get away from that restricted prohibition. Procedurally,

23 how would we proceed once that bill, should it be

24 successful within the next couple of weeks? My

25 understanding it's met with very little, if any,

23

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1 opposition and there's been an indication that the chances  
2 for signature are pretty good.

3           How does that fit into our comment period  
4 basically?

5           MS. SMALL: How that would work is --  
6 because we're under the time limit with the Office of  
7 Administrative Law, these regs, if we want them to be  
8 effective, would be submitted now after the 15-day comment  
9 period and would become effective within 30 days after  
10 October 8. Then the bill you're referring to, I don't  
11 believe it has emergency language in it.

12           CHAIRMAN EATON: That's correct.

13           MS. SMALL: It would become effective as of  
14 January 1. The changes that I believe you're referring  
15 to, different ways of distributing money under the  
16 program, which are significantly different than the way  
17 the regs reflect the statute at this point. So what we  
18 would have to do is start a new reg package as of January  
19 1 to make those changes.

20           CHAIRMAN EATON: Would that be a complete  
21 regular package or would we just take the one section that

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22 deals with the allocation of funds?

23 MS. SMALL: Just the one section.

24 CHAIRMAN EATON: Thank you.

25 MS. SMALL: You're welcome.

24

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1 CHAIRMAN EATON: Any other questions of  
2 staff?

3 BOARD MEMBER JONES: Mr. Chairman.

4 CHAIRMAN EATON: Mr. Jones.

5 BOARD MEMBER JONES: I'm very pleased with  
6 what this reg package looks like, and I think the only  
7 action we need is to --

8 MS. NAUMAN: We need to provide direction  
9 to the final 15-day comment period.

10 BOARD MEMBER JONES: Start the final 15-day  
11 comment period. I don't have any changes.

12 CHAIRMAN EATON: Without objection, so  
13 shall be the direction of the Board. Hearing no  
14 objection, so shall be ordered. Thank you.

15 Next item.

16 MS. NAUMAN: Mr. Chairman, this item is  
17 consideration of a new site for the solid waste disposal  
18 and codisposal site under the program 2136. This is the  
19 38th Street site.

20 This item was scheduled for your  
21 consideration in late July and was postponed at that time

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22 to allow us additional time to discuss some outstanding  
23 issues with the City, specifically issues of liability and  
24 site access.

25 Since that time, we have had an opportunity

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1 to have a fairly comprehensive meeting with the City and  
2 conducted a site tour, and our chairman participated in  
3 that session with the city officials. Subsequent to that,  
4 they were able to obtain site access from the three  
5 adjacent property owners and last week did conduct the  
6 site assessment in order to determine the presence and  
7 extent of burn ash on the subject properties.

8           This morning, our staff is prepared to  
9 review with you the findings of that site assessment. In  
10 addition, representatives from the City of San Diego are  
11 here and would like to address the Board in the interest  
12 of trying to craft some type of a partnership on pursuing  
13 remediation of the site.

14           So with that, I'll turn it over to Todd.

15           MR. WALKER: Mr. Chairman and Members of  
16 the Board, Scott Walker again, Permitting and Enforcement.

17           CHAIRMAN EATON: Transformation at its  
18 best.

19           MR. WALKER: This will be a joint  
20 presentation by Todd Thalhamer and myself.

21           Again, this item presents consideration of

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22 the 38th Street burn dump site, City of San Diego, for  
23 remediation pursuant to the 2136 program. Consideration  
24 of this new site was continued from the July Board  
25 meeting.

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1           What we would like to do here is to provide  
2 you with a brief description, a very brief video clip of  
3 some recent news clips to give some more background, and  
4 then get into the updated site assessment which Todd will  
5 present, discuss the proposed remediation project, then  
6 get into the proposed contributions and agency partner  
7 roles, and then provide conclusions on AB 2136 program  
8 criteria.

9           The 38th Street burn dump site is located  
10 on the corner of 38th and Redwood Streets in the City  
11 Heights area of San Diego. In this area, 30 percent of  
12 the residents are below the poverty level, and 76 percent  
13 are Asian, black, Hispanic demographics.

14          This site represents the direction of  
15 outreach that the program has looked into with regard to  
16 urban areas and also environmental justice issues.

17          The burn dump site was discovered in the  
18 early 1990s. It was a possible area used for municipal  
19 waste dumping and burning starting in 1928. There's very  
20 few records on this site.

21          There are three residential properties

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22 affected that we've identified. In addition, there's a  
23 city maintained vacant lot. We have not confirmed an  
24 ownership or easement of this particular parcel. In  
25 addition, Caltrans property is adjacent to the site and

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1 contains burn ash.

2           Radioactive waste was identified and  
3 removed during assessment of the site in December of 1998  
4 and March of 1999, and this was an issue that was quite  
5 prominent in the press, and it was a partnership and a  
6 response between the City, the Board, and also USEPA in  
7 terms of responding to this issue.

8           In addition, hazardous levels of lead and  
9 ash are identified in this burn dump, fairly consistent  
10 with what we find in burn dumps throughout the state, and  
11 at the time, interim controls were implemented and  
12 continue to be maintained by the City.

13           From here, we'll give you a brief clip of a  
14 couple of news reports.

15           (Video presentation)

16           MR. WALKER: One more very brief clip will  
17 follow here.

18           (Video presentation)

19           MR. WALKER: Now I'll switch over to Todd  
20 Thalhamer who will give you an update of the most recent  
21 site assessment that we've been involved in, and this has

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22 all occurred subsequent to the July Board meeting.

23 MR. THALHAMER: Todd Thalhamer, Solid Waste

24 Cleanup Program. I don't have a clip mike, would you like

25 me to go up to the board and just give you a brief

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1 overview? I can talk loudly, and if there's any  
2 questions, I can come back to the microphone.

3 CHAIRMAN EATON: Whatever you feel  
4 comfortable with. That would be fine.

5 MR. THALHAMER: First I'm going to take the  
6 layover off and get a better view of what we're looking  
7 at.

8 In the video, this is the 38th Street  
9 property, and then the last issue was determined if we  
10 went, the burnout did continue onto private properties.  
11 And we have two properties to the north and one property  
12 to the south.

13 The borings on the south property indicated  
14 that there was high levels of lead in the soil, but no  
15 burn ash visible. It was elevated levels of just lead.  
16 The Pacheco property and the Davis property had all the  
17 trenching locations which is in green and indicates there  
18 is ash on the property to the extent we believe that the  
19 Pacheco property it does go underneath the house at part  
20 of the foundation, and Davis, it goes to at least the  
21 concrete pad.

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22            Basically what we're looking at is Caltrans  
23 has a very large, extensive problem on their property  
24 between the I-15 off-ramp and the two homes. The area in  
25 red indicates the known ash. This is the ash we are only

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1 able to trench and locate in about a day's time. This was  
2 a very quick assessment to determine if we had ash on the  
3 two properties to the north. It also indicates we may  
4 also have ash on the third property, but at the time we  
5 did have not authorization to enter that property and  
6 continue excavations.

7 I want to provide this real quick video  
8 overview and address questions you may have from the past  
9 assessment we did last week.

10 (Video presentation)

11 MR. WALKER: Currently the proposed AB  
12 2136 remediation project would consist of a partnership  
13 with city, state, and federal agencies. A key element of  
14 this project is community relations, and the City has and  
15 will continue to provide all coordination of community  
16 outreach.

17 The basic project determined by staff  
18 necessary to remediate this site would be to remove as  
19 much contaminated ash as practical for transport and  
20 disposal. There would then be grading and clean fill  
21 applied.

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22           In addition, there would continue to be a  
23 very intensive effort at monitoring for radioactive waste.  
24 None was identified during this most recent assessment,  
25 but with USEPA directly involved, that would have to

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1 continue.

2 BOARD MEMBER ROBERTI: What happens if a  
3 significant amount of radioactive waste is uncovered? How  
4 do we apportion the responsibilities for the cleanup?

5 MR. THALHAMER: At this time the  
6 radioactive debris would be identified and located by  
7 USEPA. And just from prior example, we did remove five  
8 gallons of contaminated soil with radium 226 and strontium  
9 90. That was paid for by the City because it was located  
10 on their property. The total bill for that removal was  
11 about \$8,000.

12 BOARD MEMBER ROBERTI: And do we have any  
13 identifiable parties who are responsible or it's just the  
14 community or what is it?

15 MR. WALKER: At the present time, this  
16 would appear to fit, as best we've seen to date, a classic  
17 orphan site-type situation. There are -- obviously  
18 there's property owners here, but in terms of any evidence  
19 that they knew about it, had any prior knowledge, there is  
20 no evidence of that.

21 In addition, the City-maintained vacant

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22 lot, there's no documentation of ownership of the specific

23 parcel there by the City, or easement. They have

24 continued to maintain that lot.

25 BOARD MEMBER PENNINGTON: What about the

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1 houses, the occupants of those houses?

2 MR. WALKER: What we've -- at this point  
3 the -- this is a very low income area. There -- these  
4 particular homes are assessed, I think, on the order of  
5 less than \$100,000. And there again, there's no evidence  
6 that either one of the owners had any prior knowledge of  
7 this site being there.

8 BOARD MEMBER PENNINGTON: I understand  
9 that, but I mean if we find radiation there, are we going  
10 to have to move them out and destroy the homes?

11 MR. WALKER: Well, to get into that a  
12 little bit more, essentially staff, at this point, have  
13 determined the most effective remediation would be done in  
14 recommending that two homes be removed, and the City will  
15 be considering purchase of the impacted homes, and they'll  
16 be able to give you more feedback on that question when  
17 they come up here. The Waste Board portion of this  
18 project does not include this at the present time.

19 MR. THALHAMER: Can I just add --

20 CHAIRMAN EATON: So would we be cleaning up  
21 just the portion of the vacant lot and perhaps seeking

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22 contribution from Caltrans?

23 MR. WALKER: Correct.

24 CHAIRMAN EATON: And not affecting either

25 of the other homes?

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1 MR. WALKER: Correct. The Caltrans --

2 CHAIRMAN EATON: Because that was one of  
3 the issues, and perhaps if I could just sort of kind of --  
4 when I was down in San Diego with legal counsel and  
5 Mr. Chandler, we raised a number of points including a  
6 hold harmless clause, a situation where we're not in the  
7 business of purchasing homes.

8 At that time there was only one home. This  
9 is a very poor neighborhood. English is not the primary  
10 language in many of these homes. It's an environmental  
11 justice issue, which I think the Board has to be very  
12 sensitive to in moving along.

13 You're not suggesting, I don't believe,  
14 that we go in and clean the vacant lot and not -- and  
15 leave the other two homes or three homes untouched; are  
16 you?

17 MR. WALKER: Correct. We're not -- this  
18 project would involve cleanup of the whole -- it would  
19 have to involve cleanup of the whole site and it would be  
20 multiple -- Caltrans has indicated their commitment, and  
21 they would be responsible for their portion of the

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22 property, and the rest of the project would involve a  
23 partnership. And again, this project does not include the  
24 Board purchasing the homes, but it would be involved with  
25 removing as much ash as practical.

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1           In terms of the indemnification, before the  
2 project could be forward, currently the City is drafting  
3 an indemnification -- some indemnification language to  
4 protect the Board, and it has been in consultation with  
5 the Legal Office.

6           CHAIRMAN EATON: Perhaps maybe we should  
7 hear from the City as to what their plans might be, and I  
8 have Mr. Rich Hays and Ms. Silvia Castillo, the young  
9 woman with the sunglasses who seems to always show up on  
10 the video, if you could perhaps both of you could come  
11 forward and give us some clarification.

12          MR. HAYS: I'm Rich Hays, Director of  
13 Environmental Services for the City of San Diego. I would  
14 like Sylvia, who has been the project director, to give  
15 you a brief overview, and I would like to make some  
16 concluding comments.

17          But I would like to point out, to begin  
18 with, that this property, there is a question -- as was  
19 pointed out to the Board on the ownership of it --  
20 clearly that the private residents own their property and  
21 Caltrans has a major part. And in fact, the highest

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22 levels of contamination we found on their part of the

23 property.

24           So we have looked at this as a joint

25 partnership with the State and the City and the residents

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1 to date.

2 MS. CASTILLO: Good morning. I'm Silvia  
3 Castillo, an engineer with the City of San Diego  
4 Environmental Services Department. I wanted to step back  
5 a moment before addressing the question about the  
6 residents.

7 Nine months ago is basically when I made a  
8 call to the State and asked for their assistance. This is  
9 a city vacant lot, no identified origin of waste, who  
10 disposed of it, who burned it, and so we were just left  
11 basically with this mess that we had been given a notice  
12 of violation from the LEA.

13 We secured the site, called the State, the  
14 State responded. Actually, Todd came down, and we were  
15 basically looking to classify the waste and quantify it.  
16 Little did we know it would end up eventually being a RAD  
17 site. EPA has been very wonderful in working with and  
18 Todd's connections with EPA have been great. We've been  
19 out there three times to the site, trying to assess the  
20 problem and determining what would be the best  
21 remediation.

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22           In working with Board staff, it has been  
23 really a Godsend. I wouldn't have known what to do with  
24 radiation let alone now we're dealing with residential  
25 property. It's been fortunate that these residents have

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1 been cooperative with us. They're obviously concerned  
2 about their own health.

3           Ms. Pacheco, who is the property that we  
4 now know is impacted by this contaminated waste, is a  
5 single parent of five children. She's a low income  
6 parent, does not have the resources to address this, and  
7 now she's obviously concerned about her health impacts,  
8 valuation of her property, et cetera.

9           Ms. Davis is a -- she has been renting the  
10 home more recently. She has -- I've been working with her  
11 son regarding the results of the investigation and what we  
12 have most recently found.

13           So that's where we are now. We know we  
14 have a problem. It's much bigger than when we started.  
15 My expertise, or the City's experience in dealing with the  
16 hazardous waste site, radiation site, et cetera, is beyond  
17 any experiences that we have had. What's fortunate in  
18 working with Board staff is that you have a consultant  
19 onboard with this expertise and a contractor onboard that  
20 can come and address this situation right away.

21           The City's process in hiring a consultant

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22 or a contractor is fairly lengthy, and my best estimate

23 would be for to us get a consultant hired, get plans and

24 specs, identify remediation, would be a six-month process,

25 and another contractor to get them onboard, to do the

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1 work, would be another six months. So realistically, if  
2 the city were to take this on by ourselves, it would be a  
3 year from now before work could be done. And again, now  
4 we know we have a major problem.

5 I would like to turn it over to Rich at  
6 this point.

7 MR. HAYS: Again, I would like to say we  
8 do appreciate the support we've gotten from the Waste  
9 Board. Staff has been incredible.

10 This is a great concern to the City. This  
11 particular site, there was a question over the ownership  
12 of it, and our department stepped in because we felt there  
13 was a health and safety issue here and closed it off,  
14 covered it up, and began the cleanup efforts.

15 The area that it is in is an area which  
16 there are several possible sites. These were privately  
17 run dumps in the '30s, and there have been residential  
18 development there since probably the late '40s. This area  
19 in fact was a rural area at one time in San Diego, and now  
20 is in the heart of the City. The City did not own or  
21 operate these dumps, but we are trying to clean it up.

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22           Thank you.

23           CHAIRMAN EATON: Any questions of Mr. Hays

24 or the City?

25           BOARD MEMBER PENNINGTON: Mr. Chairman.

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1           CHAIRMAN EATON: Mr. Pennington.

2           BOARD MEMBER PENNINGTON: Yes,

3 Mr. Chairman. I'm still concerned about these people that

4 are living there and how quick are we going to make the

5 determination whether they are in danger. And if they

6 are, how quickly are we going to move to make sure that

7 that they're removed from that danger?

8           CHAIRMAN EATON: Mr. Pennington, that issue

9 has been raised, and I'm somewhat disappointed because

10 when we met in San Diego, we went over a series of issues.

11 And one of the issues that is forthcoming is basically we

12 gained access to one piece or two pieces of property,

13 that through agreement through the City. That doesn't

14 mean we have access to remediate the site.

15           That's a whole different issue. That's a

16 whole different issue, and we haven't spoken to that issue

17 yet, and neither has the City, in regard to my

18 understanding here, as I talked to you that we would be

19 willing to look into a contingency-type of agreement like

20 we did with the County of San Bernardino. But none of

21 those contingencies have been raised here.

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22 I don't know if legal counsel has, but was  
23 instructed to work with the City's legal department has  
24 worked out, but the issue of purchase in the homes, when  
25 we were in San Diego, there was only one home that was

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1 considered. Now there's two.

2 I think the issue that you're raising is  
3 that if we go in there, one, can we be assured of access  
4 to remediate? Two, we will not have access, I don't  
5 believe, to the other two homes; will we? Especially  
6 since one is in the foundation. So pretty much that one  
7 is gone.

8 What I'm trying to say, Rich, is we talked  
9 about being cooperative and a partnership, but we need  
10 some sort of firm answers as to what our parameters are.  
11 Is that going to be our responsibility to gain access to  
12 that property? What are those? That's -- what is the  
13 parameters here?

14 MR. HAYS: I think at the time that we met  
15 and went out to the site, this assessment had not been  
16 completed.

17 CHAIRMAN EATON: Correct.

18 MR. HAYS: It was just completed last week,  
19 so at that time we did not know the extent of the problem.  
20 We were concerned and had suspicion it may have gone on to  
21 the residential property, and that's why we were

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22 proceeding because there was a depth of ash that would  
23 lead you to believe if you followed that stream, it would  
24 be on these folks' property. So it wasn't until last week  
25 we realized the extent of it.

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1           Again, this, as Chairman Eaton and I have  
2 discussed privately, is a very sticky problem. It's a  
3 residential area. It's an area that is certainly one that  
4 I know a lot of people would consider an environmental  
5 justice issue. It is also potentially precedent-setting  
6 in the sense that this is private property, and the City  
7 of San Diego, nor the Waste Board, put this waste on  
8 there.

9           So that -- our joint interest is getting it  
10 cleaned up and protecting the health and safety of these  
11 folks.

12           BOARD MEMBER PENNINGTON: Nor did the  
13 residents.

14           MR. HAYS: That's correct.

15           CHAIRMAN EATON: Senator Roberti, I think  
16 you had a question.

17           BOARD MEMBER ROBERTI: Mr. Chairman, my  
18 concerns are on the same theme, but maybe a little bit  
19 different.

20           I am concerned, as you are, about do we  
21 have the ability to access these homes, but I still would

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22 like some more clarification, which maybe I just didn't

23 hear it and it's there, as to what are our authority is.

24           The contamination, I take it, is due to the

25 migration of ash. Is there any other kind of

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1 contamination that's involved? Have we gone to the proper  
2 lengths to determine if there are other kinds of  
3 contamination involved?

4           Let me get all of my questions out and I'll  
5 let you answer. What is our authority once we find, say,  
6 an ash contamination or a migration of methane -- for  
7 another kind of situation which would come under our  
8 jurisdiction -- to find access to these properties, and  
9 then what mechanisms do we have available to alleviate  
10 that problem, given our choices, and then to make a  
11 decision whether it warrants closing the property down,  
12 tearing the homes down, which is a major question in and  
13 of itself.

14           I'm really concerned about jurisdiction  
15 right here as to the kind of waste involved. I guess  
16 that's the ground question, the original question, and  
17 after that, everything else seems to follow.

18           Can you give me some help?

19           MR. THALHAMER: Todd Thalhamer, Waste  
20 Board.

21           The primary consideration and the primary

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22 concern here is the burn ash. It is non-RCRA, in other  
23 words, a non-federal hazardous waste. In the State of  
24 California, it is considered a hazardous waste due to the  
25 levels of lead and zinc.



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1 BOARD MEMBER ROBERTI: The burn ash?

2 MR. THALHAMER: The burn ash.

3 BOARD MEMBER ROBERTI: Okay. Now, if burn  
4 ash is considered hazardous waste in California, then why  
5 isn't Toxics involved, or are they involved?

6 MR. THALHAMER: At this particular time and  
7 point, traditionally with the MOU that we have with  
8 Toxics --

9 BOARD MEMBER ROBERTI: MOU? I'm still  
10 learning the acronyms.

11 MR. THALHAMER: Memorandum of Understanding  
12 with Toxics. In our cleanup program, we have an agreement  
13 with Toxics to work on burn ash sites. In other words,  
14 they've always been treated as an old municipal burn dump  
15 solid waste. However when you sample it, it comes back  
16 hazardous under California classification.

17 BOARD MEMBER ROBERTI: But because of our  
18 MOU with Toxics, it comes under our jurisdiction.

19 MR. THALHAMER: Correct. And comes under  
20 our cleanup program. We have worked with them previously,  
21 but they have a cleanup program that only has about

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22 \$20,000 per site.

23 MR. WALKER: I wanted to respond briefly

24 to the question on site access.

25 Similar to our tire remediation program, we

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1 attempt to get site access through voluntary site access  
2 agreement from the property owners. Should that not be  
3 possible, in this particular case, that would have to be  
4 negotiated with, for instance, USEPA because there are  
5 some other ways to gain site access without going through  
6 a -- if you can't get it voluntarily, there's other means.  
7 Although, at this particular point, we think that with the  
8 leverage of an approval, it would give us a ground and a  
9 strong basis to get a voluntary access.

10 MR. THALHAMER: Two other additional quick  
11 comments, is that one, our legislation does allow us to  
12 deal with this issue because it's a codisposal, and the  
13 definition of codisposal is where you have solid waste  
14 commingled with hazardous waste.

15 BOARD MEMBER ROBERTI: Codisposals, are  
16 they -- do they always come under our jurisdiction, or do  
17 we make an apportionment decision as most of them would be  
18 solid waste that comes under our jurisdiction?

19 MR. THALHAMER: Primarily most of it comes  
20 under solid waste.

21 BOARD MEMBER ROBERTI: If it were primarily

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22 a toxic dump site with some garbage, we go to Toxics?

23 MR. THALHAMER: Correct.

24 BOARD MEMBER ROBERTI: And we work it out,

25 I take it, at the staff level --

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1 MR. THALHAMER: Yes.

2 BOARD MEMBER ROBERTI: -- to -- what's  
3 that, the MOU we fall on as to who's got responsibility.

4 MR. THALHAMER: Right.

5 BOARD MEMBER ROBERTI: We went through this  
6 process, I take it, on this 38th Street site some time  
7 ago?

8 MR. THALHAMER: Yes.

9 BOARD MEMBER ROBERTI: Okay.

10 MR. THALHAMER: The only other area of  
11 concern would be the radioactive, also to address  
12 Mr. Pennington's question, is that USEPA is scheduling a  
13 complete site survey and homes, now that there is  
14 confirmation of ash on the property, that they are going  
15 to do a radiological survey of both homes, actually three  
16 homes, and the entire site to address the potential other  
17 RAD waste.

18 BOARD MEMBER ROBERTI: And right now, as we  
19 can adduce, it's three homes. Any potentiality for  
20 anything more expansive than that?

21 MR. THALHAMER: At this particular time and

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22 point, based on what we have in the field, I believe it's

23 pretty much going to be the three homes.

24 BOARD MEMBER ROBERTI: And again, as best

25 we can tell, this is an orphan site without any primary --

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1 MR. THALHAMER: Correct.

2 BOARD MEMBER ROBERTI: -- parties  
3 responsible.

4 CHAIRMAN EATON: Access -- would access,  
5 if it was voluntary, does that mean that house, we would  
6 go under the house? I mean, we talk about access. The  
7 issue -- we know we have access to the vacant lot and  
8 probably Caltrans, and the question really becomes, and so  
9 does -- dodging the question, there's still a house there.

10 MR. THALHAMER: Correct.

11 CHAIRMAN EATON: So even though you have  
12 access, what is the remediation with the house, underneath  
13 the house? Are we going to put the house up? Are we  
14 going to have to buy the house?

15 I mean, those are the questions that we're  
16 looking for because in order to structure the partnership,  
17 I think, as we talked about earlier, what are the  
18 parameters? I have no problem in terms of -- I told you  
19 before that I would be willing to work with and to commit  
20 to the City, but we also have to have some sort of  
21 parameters as to what the remediation happens to be, who

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22 is going to be responsible for obtaining the access.

23           If you're looking for us to help you with

24 the local government in terms of giving them a sign that

25 we're willing to go into partnership, I don't think that's

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1 a problem. But at that point, remember we only thought  
2 there was one house and now we know there's three houses.  
3 That's difficult, but we as a Board can not use those  
4 funds to purchase a home. If you would like a home, I  
5 think we have some in our inventory that we may have  
6 already foreclosed on in other matters. And I'm not being  
7 light here, but we really want to help. We know there's a  
8 remediation. But the question is how do resolve it with  
9 some of the issues that are still outstanding? Those are  
10 not our issues.

11 MS. CASTILLO: The City will be taking  
12 responsibility for site access, has done it for the  
13 assessment and will do it for the remediation.

14 Regarding the purchase of the homes, this  
15 is something that needs to internally to go up to the City  
16 Manager and up to City Council, and I'll let Rich address  
17 that.

18 Regarding conversations with these  
19 particular residents, Ms. Pacheco was aware and that there  
20 was a strong reason to believe there was contamination.  
21 She was there during the assessment. She visually saw

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22 what the problem was and how extensive it was. When we  
23 talked about remediation at that time, she asked, "Is  
24 purchasing my property a possibility," and my response to  
25 her is, "We need to know what the assessment on your

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1 property is first."

2           She's aware of that. We will have a  
3 discussion once it's defined what the remediation is. The  
4 results actually just came back yesterday. Monday we got  
5 lab results. We haven't had time to meet with her. She's  
6 open to that. She's concerned, obviously.

7           Regarding potentially resident number three  
8 to the north and four, the City has also taken on quite a  
9 bit of community outreach. We have supplied the  
10 residents. We walked the streets and let them know, gave  
11 them information sheets on the initial assessment, as well  
12 as the subsequent one, as well as a letter to inform them  
13 that we would be out there again. So there has been a lot  
14 of community outreach. There will be more.

15           So I don't think this is going to be -- I  
16 think we're going to have willing residents in this  
17 neighborhood. Their comments back to me is, "We have no  
18 money," and at this point, that's why we're here and EPA  
19 is here. We're all looking to do the right thing and help  
20 them all out.

21           I'll let Rich Hays address our process

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22 regarding can we purchase their homes, and we can't answer

23 that today.

24 CHAIRMAN EATON: Senator Roberti.

25 BOARD MEMBER ROBERTI: Yes, Mr. Chairman,

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1 to the witnesses. On the purchase of homes, if EPA finds  
2 significant radioactivity, don't they have funds to do  
3 exactly that, purchasing homes as well? And there is a  
4 possibility that we would be -- we could be intervening  
5 prematurely pending their decision, which I take it  
6 they're in the process now of making an evaluation of  
7 radioactivity.

8 MS. CASTILLO: Everything has been  
9 voluntary and has been very congenial at this point. EPA  
10 has expressed their ability to force an assessment and  
11 force remediation. We're not to that point.

12 Regarding purchase of the homes, that  
13 hasn't been part of any of the discussion, and I don't  
14 know of their ability of purchasing a home or removing  
15 the -- obviously removing a residence temporarily, which  
16 has been discussed, in order to perform remediation has  
17 been discussed, but not the long-term of it.

18 BOARD MEMBER ROBERTI: If we have -- now,  
19 you're indicating this may not be the case, but if we have  
20 residents who appear to be unwilling to move, I would feel  
21 much more comfortable, if it gets to this, requiring a

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22 move based on radioactivity rather than a non-hazardous

23 problem, and I would therefore feel more comfortable

24 relying on EPA's decision, if there is radioactivity

25 involved, rather than our moving in first, if this is

1 possible, if this is going on.

2 I'm unclear because we just don't know what  
3 EPA's involvement is right now. But something, they seem  
4 very benign right now, but five months from now we would  
5 go in a hornet's nest because we required somebody to be  
6 removed from a house that we thought was all agreed to and  
7 everybody was quite happy.

8 Average, normal people have a strange way  
9 of not signaling their true feelings.

10 MS. CASTILLO: Regarding the RAD -- and  
11 Todd, if you want to address this -- there was a RAD  
12 survey continued on the private properties, and again, it  
13 was on the surface. When we were on our particular vacant  
14 parcel, we found the RAD by digging down.

15 And so to answer the question, is it three  
16 feet or four feet below surface where we can't detect it  
17 with our monitors, we don't know because we did not dig.  
18 So at this point they're on alert, they're there to assist  
19 us, they're part of our support team out there, but no,  
20 they're not at the point of declaring it as a radiation  
21 problem because none has been detected on the surface.

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22 MR. THALHAMER: Just to clarify this a

23 little more, hopefully.

24 The RAD issue itself, USEPA's emergency

25 response team is actually working the Waste Board's

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1 authority on this site. They've come in as a contractor  
2 basically to us to assist us in the site and have been  
3 there from the beginning. If it does come down that there  
4 is radioactive debris in the residential homes and it  
5 shows eminent danger, USEPA then will activate their  
6 authority and relocate the residents temporarily while the  
7 material is being removed.

8           As of right now, we have not detected any  
9 additional radioactive debris, so therefore USEPA is going  
10 to continue in a support role to the Board on the  
11 radiological hazards, but the ash has to be removed. And  
12 right now staff, Mr. Eaton, is that we are recommending at  
13 least one home be removed and all the ash off the property  
14 to give you an idea of what type of remediation. In order  
15 to shore up the homes and go through the engineering  
16 design, I don't think is going to be cost effective. It  
17 would actually be cheaper to remove the homes, remove the  
18 ash, and bring in clean fill.

19           CHAIRMAN EATON: So is the \$250,000 that's  
20 being asked include the removal of the home or is that --  
21 where does that fall? Maybe Rich ought to talk to that.

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22 MR. THALHAMER: No.

23 CHAIRMAN EATON: And that does not include

24 that; correct?

25 MR. THALHAMER: Correct.

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1           CHAIRMAN EATON: Okay.

2           MR. HAYS: No, it does not include it.

3 This is just the preliminary beginning to clean the site  
4 up, and does not include it. The issue of the homes is  
5 one that because, as you said, sometimes people are  
6 unhappy, is not my ability to say we'll purchase those,  
7 but that's the jurisdiction of City Council and is  
8 scheduled to be discussed in closed session on the 14th of  
9 this month. Our Council has been in recess up until now,  
10 and because of the potential of litigation, we feel we  
11 need to discuss that in closed session on counsel's  
12 advice.

13           CHAIRMAN EATON: Does the \$250,000 include  
14 the other three homes, the Pacheco and -- I can't make out  
15 the other name, but the Davis home? Does the \$250,000  
16 include all of that? Assuming that you can go in there.

17           MR. THALHAMER: Yes. \$250,000 includes ash  
18 removal out of Pacheco's, Davis's and either some type of  
19 barrier wall or some type of cap between that and the  
20 Caltrans property.

21           CHAIRMAN EATON: So if there is resistance,

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22 there might have to be a condemnation action or something

23 along those lines.

24 MR. HAYS: Correct.

25 CHAIRMAN EATON: Mr. Jones.

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1           BOARD MEMBER JONES: One question. If we  
2 were able to get consensus to fund this \$250,000, it would  
3 seem to me that we would have to construct it similar to  
4 San Bernardino where we put in certain conditions  
5 including the treatment of these homes and those types of  
6 things prior to the expenditure authority or whatever is  
7 the will of this Board, because I don't think it's our job  
8 to be buying homes in San Diego, but I think it is our job  
9 to help clean up the ash that those homes may be sitting  
10 on top of. And I don't have any problem with that  
11 expenditure, but I have a big problem with buying the  
12 house so we can get to that ash.

13           CHAIRMAN EATON: All right.

14           Mr. Hays.

15           MR. HAYS: Just one final comment. Again,  
16 these are homes and a vacant lot that sit on property that  
17 was operated as a landfill by private companies, which  
18 have since gone out of business, in the '30s, and we don't  
19 believe there was any activity on it in the '40s or '50s.  
20 This is a classic abandoned landfill, and we do believe it  
21 represents a threat to public health and safety and

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22 certainly has disadvantaged and negatively economically

23 impacted the people in this area.

24 CHAIRMAN EATON: Rich, would this help?

25 Because I truly believe this was, just my opinion, brought

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1 back prematurely. We didn't get any of the issues  
2 resolved. In fact, by testimony today, we just got some  
3 of the results back yesterday. There hasn't been time to  
4 review any of that or check on some of the issues, which  
5 we met both with the City Attorney and our Chief Counsel,  
6 and I understand the necessity.

7           Is there a way that, you know, perhaps  
8 Members, that we should at least signal our intent if that  
9 would help you, that we do intend to work in a partnership  
10 with you, but that the details or the structuring of the  
11 agreement have yet to be worked out and has to be brought  
12 back here for approval once that time happens? I think --  
13 or at least those issue. I think that's what you're  
14 seeing here. Maybe we were hard to get ahold of  
15 yesterday. I'm not sure, but I know that I was not really  
16 aware of too much that was going on. So will that be  
17 helpful? I don't even know if my fellow colleagues will  
18 even agree with that.

19           BOARD MEMBER PENNINGTON: I certainly agree  
20 with that.

21           BOARD MEMBER JONES: I don't have a problem

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22 with it.

23 BOARD MEMBER ROBERTI: What are you asking

24 for, Mr. Chairman?

25 CHAIRMAN EATON: We could signal our intent

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1 that we would gladly enter into a partnership with the  
2 City for cleaning up the site, but based on a number of  
3 contingencies which have yet to be worked out among the  
4 City staff and our legal staff as well as perhaps the  
5 whole issue in closed session with regard to the homes.

6           As you remember in San Bernardino, for  
7 those of you, there were some similar kinds of outstanding  
8 issues. They worked it out and brought it back and each  
9 of the Board Members could see what the agreement happened  
10 to be, what the roles were with respect to the each of the  
11 agencies, they had a better understanding of the  
12 contingencies if they weren't able to get "X" then the  
13 money would be freed up for other projects. That's not  
14 saying we wouldn't go back and fund them in time.

15           BOARD MEMBER ROBERTI: I'm in accord. I'm  
16 in agreement with that. I would just like to emphasize  
17 when you come back, I would like maybe a little bit more  
18 than we have this morning on the matter of radioactivity  
19 and EPA's involvement because if it comes to the fact that  
20 we are asking people to move or to sell their property, I  
21 feel much more comfortable as a member of this Board

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22 defending -- it's much easier to defend my position based  
23 on radioactivity rather than on ash migration, even though  
24 ash migration -- I certainly wouldn't want to live on that  
25 myself, but just like more information. That's all.

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1           MR. HAYS: The concern that I would have,  
2 it's always a tradeoff, and if we're talking about coming  
3 back at the end of the month or beginning of next month,  
4 we're probably talking about not starting cleanup on this  
5 site until November, maybe even early December.

6           I think it is set in the state right now  
7 that represents some degree of public health risk. I  
8 wonder if there's any in between ground that we could  
9 start on the work and come back.

10          CHAIRMAN EATON: The only thing you could  
11 probably start on is the property by which we have access  
12 for remediation, which is the lot and doesn't include  
13 Caltrans. And therefore, you run the risk, don't you, of  
14 exposing further liability if you clean up only your  
15 portion with regard to the adjoining homeowners, whether  
16 it be dust or ash or anything else that's kicked up?

17          I understand that. I understand the  
18 seriousness of it, and that's why we went down to meet, to  
19 try to resolve it. And I think we had a pretty good  
20 meeting. Maybe I came away with the wrong recollection.

21          There were some outstanding issues that

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22 needed to be resolved that were separate and apart from  
23 the assessment on the other three properties. I have not  
24 heard that those have been resolved. We have no  
25 indemnification hold harmless clause; do we?

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1 MS. TOBIAS: The Legal --

2 CHAIRMAN EATON: That's not --

3 MS. TOBIAS: The Legal Offices have been

4 working and we don't have any legal issues.

5 CHAIRMAN EATON: You don't have any legal

6 issues with regard to the adjoining homes?

7 MS. TOBIAS: I don't think the adjoining

8 homes bring up the legal issues that we talked about

9 before. We have an indemnification clause --

10 CHAIRMAN EATON: I disagree 100 percent. I

11 disagree 100 percent because the whole issue was whether

12 we talked about purchasing of the homes down there; did we

13 not? That issue was raised --

14 MS. TOBIAS: Well --

15 CHAIRMAN EATON: -- in that context.

16 MS. TOBIAS: What I'm referring to is that

17 we were asked to work out the indemnification.

18 CHAIRMAN EATON: Is there a hold harmless

19 clause in our file so that the Board Members can see?

20 MS. TOBIAS: No, there is not.

21 CHAIRMAN EATON: Okay. Well then, I think

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22 that's part of the package. We saw some of the agreement

23 that took place with San Bernardino, and we don't have

24 that issue here. What is the indemnification clause

25 contain? Does it contain anything as it relates to the

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1 other homes, inverse condemnation, condemnation, access to  
2 the other property? I mean, those are the kinds of  
3 questions that are here. We raised those issues.

4 Senator Roberti.

5 BOARD MEMBER ROBERTI: A point you made,  
6 which I guess wasn't fully expanded on by the witnesses  
7 yet, and maybe Counsel can help us a little bit.

8 We do have access to one piece of property.  
9 Can't we begin working on remediation of that one piece of  
10 property? I didn't quite understand why we can't work on  
11 getting more information regarding our ability to access  
12 and the other contingent problems on the other pieces of  
13 property, and that may help us find out if there are other  
14 more serious problems, such as radioactivity, involved;  
15 that we get started on the one piece of property that we  
16 do have access to, and I suspect it might fit with the  
17 timetable because we're not going to clean up all three  
18 pieces of property, anyway.

19 CHAIRMAN EATON: I think --

20 BOARD MEMBER ROBERTI: So why can't we  
21 pursue that as a possibility?

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22           CHAIRMAN EATON: I think that is a  
23 possibility. There is one issue that was raised. If you  
24 go into the property that is owned, or at least that we  
25 would have access to, which is the vacant lot -- and I'm

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1 not talking about the Caltrans property -- and you start  
2 digging it up and cleaning it up and remediating -- first  
3 off, we don't have an actual dollar amount -- then, does  
4 that invite Ms. Pacheco, a woman of meager means, without  
5 proper representation to then file an inverse condemnation  
6 suit based upon our activities in the other lot, and  
7 subject to the Board to litigation?

8 MS. TOBIAS: I --

9 CHAIRMAN EATON: That's my concern with  
10 going into a separate part. I have no problem. I think  
11 there is an immediate need, but I also don't want to get  
12 into a situation where everyone doesn't know what the  
13 rules are and then all of a sudden you go in and we  
14 develop the rules as we go along. That's not what we want  
15 to do. I don't have a problem.

16 What can you say, Mr. Hays, with regard to  
17 that property? What do you feel would be the City's  
18 liability if we went in there and cleaned up that vacant  
19 lot and how much would it cost?

20 MR. HAYS: I don't think, obviously  
21 Chairman Eaton, we're prepared to address that today.

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22 I think the project needs to be done in a  
23 comprehensive way, and I guess if there's a way to start  
24 the process going and come back with the information, we  
25 would be glad to do that. We were under the impression

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1 that the issues you had raised in the meeting had been  
2 addressed, so I'm disappointed that we didn't have the  
3 same understanding of that. You know, it's a problem  
4 we're trying to work on and get resolved the best we can.

5 BOARD MEMBER ROBERTI: Mr. Chairman, could  
6 our own staff give us their opinion as to what the  
7 problems and possibilities are with going in on one piece  
8 of property while we try to define our ability to access,  
9 get the requisite amount of money, and find out what the  
10 other problems are on the totality of the project?

11 MR. WALKER: From staff's standpoint,  
12 technically we would prefer rather than to mobilize the  
13 one parcel is to first, before we mobilize, obtain the  
14 full site access, to have either a decision made from the  
15 City or some indication as to what would happen with  
16 regard to those, potential purchase of the parcel or work  
17 out another way where ash could be removed without removal  
18 of the parcels.

19 So that rather than going there for part of  
20 the parcels, we would rather have it conditional on  
21 addressing those other issues before we mobilize.

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22 CHAIRMAN EATON: So that's different than

23 what Mr. Hays said, if I hear correctly.

24 MR. WALKER: I think in our discussion with

25 the City --

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1           CHAIRMAN EATON: I'm not trying to create a  
2 rough here, but your preference was to have the whole  
3 project is what I heard you say, and Mr. Hays was saying  
4 isn't there a way we can work it through, so --

5           MR. WALKER: We're basically of agreement  
6 that we need to do the whole project, but there are  
7 certain pieces that would have to be done first before we  
8 can actually start. And those are the pieces that would  
9 continue to be followed up on and resolved before we would  
10 actually mobilize and start the removal of the ash.

11          BOARD MEMBER PENNINGTON: What about,  
12 Mr. Chairman, if we approve the resolution but require  
13 that the staff talk to -- get the approval of the  
14 Executive Director and move forward? I'm sure  
15 Mr. Chandler knows where we stand, and then maybe come  
16 back for review in a month, but at least we get some work  
17 done and we're not binding to all.

18          BOARD MEMBER JONES: Mr. Chairman.

19          CHAIRMAN EATON: Mr. Jones.

20          BOARD MEMBER JONES: Along the lines that  
21 Mr. Pennington just said, I'm wondering if there wouldn't

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22 be value in -- there's obviously some issues that have  
23 been raised from the dais and prior in another meeting  
24 that Board Members don't feel have completely been  
25 answered. Would there be some value in holding this item

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1 over until later in the day and letting the staff work on  
2 a resolution that identifies all of those issues and  
3 during the break or during lunch break or whatever, try to  
4 get those worked out that there are conditions; that the  
5 allocation of dollars is given, but it is conditioned upon  
6 certain pieces being fulfilled by either Caltrans, the  
7 City, or USEPA, and identify the issues, all of the  
8 issues, that were brought up in prior meetings, whether it  
9 goes in the resolution or it is reported back to us, and  
10 which ones haven't been resolved, and maybe some  
11 conditions of the expenditure and bring it back this  
12 afternoon.

13           CHAIRMAN EATON: I think that rather than  
14 come back this afternoon, we're sort of going circular  
15 here. The original sort of proposal that was made is to  
16 basically -- I have no problem committing the \$250,000  
17 subject to certain kinds of agreements being worked out by  
18 the staff, and then that would be brought back. That  
19 should give Mr. Hays plenty of ammunition with his City  
20 Council. He should also be able to, if there are areas by  
21 which of certain kinds of preliminary work can be done,

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22 that the staff could bring that back to us next week,

23 which is the September 8th meeting, for those preliminary

24 kinds of work load.

25 That would seem to solve your other problem

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1 of being able to begin the work that's necessary and not  
2 go to a screeching halt. That's kind of where it would  
3 be. I think -- Ms. Moulton-Patterson.

4 MS. MOULTON-PATTERSON: Thank you,  
5 Mr. Chairman.

6 I know I for one would feel a lot more  
7 comfortable if we could bring this back September 8th, and  
8 I certainly would hate to put the City in an awkward  
9 position, but that isn't too far away and I would feel  
10 more comfortable.

11 CHAIRMAN EATON: Fine. Members, just the  
12 whole item.

13 BOARD MEMBER PENNINGTON: That's fine.

14 CHAIRMAN EATON: Declare or -- okay.  
15 That's fine.

16 BOARD MEMBER JONES: I do think, though,  
17 Mr. Chairman, that staff has got to meet with your office  
18 and all the Board offices --

19 CHAIRMAN EATON: All the Board offices.

20 BOARD MEMBER JONES: That's what I said,  
21 all the Board offices, to identify whatever the open

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22 issues still are so we get those resolved when it comes to

23 the front on the 8th.

24 CHAIRMAN EATON: All right. Without

25 objection, we'll continue Item Number 3 until the

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1 September 8th Board meeting.

2 At this time we would like to take a  
3 ten-minute break and we will resume at 11:15. Thank you  
4 very much.

5 (Recess taken)

6 CHAIRMAN EATON: If I could have everyone  
7 take their seats and we will move to the next agenda item.

8 Before we begin, I'm going to ask my  
9 colleagues if they are any ex parte communications that  
10 they need to report before proceeding with the rest of the  
11 agenda.

12 Mr. Pennington.

13 BOARD MEMBER PENNINGTON: Mr. Chairman, I do  
14 not.

15 CHAIRMAN EATON: Mr. Jones.

16 BOARD MEMBER JONES: Just Mike Mohajer  
17 briefly and Rich Hays from San Diego.

18 CHAIRMAN EATON: Senator Roberti.

19 BOARD MEMBER ROBERTI: None.

20 CHAIRMAN EATON: Anyone?

21 Okay. And I just had a brief conversation

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22 with Rich Hays of the City San Diego regarding the 38th

23 Street site.

24 One other announcement, that Item Number 12

25 that was originally scheduled for today will be moved

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1 until, I believe, the September 8th meeting. So the  
2 remaining items on our calendar are 4 through 9 because  
3 Item 10 was part of the consent calendar.

4           So with that, I'll turn to Item Number 4  
5 which is consideration of clarification of the Board's  
6 resolution 97-509. Mr. Block, I guess, is going to make  
7 the initial presentation.

8           MR. BLOCK: Good morning, Chairman Eaton,  
9 Board Members. I'm Elliott Block from the Legal Office,  
10 and I'm here to make the presentation on Item Number 4.

11           This item is regarding clarification of a  
12 previous Board resolution, Number 97-509. The reason that  
13 I'm here before you today is that recently this resolution  
14 has been cited as the definitive statement of Board policy  
15 that it would not regulate disposal of inert debris for  
16 current mine reclamation sites. However, in review of the  
17 agenda items in the transcripts from the meetings where  
18 that resolution was adopted indicates that the Board was  
19 not making a final or definitive statement in regards to  
20 the regulation of these sites.

21           I need to say, just for context, I think

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22 there's a number of people in the audience that speak  
23 about inert waste and want to indicate that the primary  
24 item today will be Item Number 5 where there will be  
25 discussion of regulations regarding regulation of these

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1 sites.

2           The purpose of the item that I'm talking  
3 about to you today is not to decide if or how to regulate  
4 these sites, but purely to clarify the record and indicate  
5 the Board did not make a final determination regarding  
6 that issue two years ago. In fact, that's one of the  
7 things that we'll be considering in the next item coming  
8 up.

9           The particular finding of relevance or  
10 interest in this particular resolution for today's issues  
11 is Number 7 on page 2 of the resolution in your Board  
12 packets, that's page number 4-54, and there's one sentence  
13 in there that says the CIWMB would not have jurisdiction  
14 over the use of construction, demolition and inert debris  
15 from mine reclamation.

16           Now, looking at the agenda item and the  
17 transcripts, all of which are attachments in the agenda  
18 item before you, in fact indicate that the Board's  
19 decision was that it would not regulate these activities  
20 if they constituted recycling. But the Board, in its  
21 discussion as indicated in the transcripts, which I won't

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22 actually read through this morning but are in the record,  
23 the Board expressly noted that the final decision on what  
24 would fit within the Board's regulations during the  
25 rulemaking process. In other words, the Board was



1 comfortable with the concept that these sites could be out  
2 of the actual line drawing and decisions as to how that  
3 would be done, would occur during the rulemaking and  
4 writing of the regulation.

5           So in order to try to remove this issue  
6 from the table so that the focus can be on those  
7 regulations, I've brought this item forward today to add  
8 some additional details to that resolution. And  
9 Attachment Number 6 in your packet is a proposed  
10 regulation that would provide that additional detail.

11           I wanted to emphasize that the affect of  
12 those proposed changes would not be a reconsideration or  
13 change to the previous Board action, but simply provides  
14 additional detail to clarify the Board's previous  
15 position.

16           Regarding the particular finding that I had  
17 mentioned before, up on your screen now and on page 4-45  
18 of your packets, you'll see that the more complete  
19 language regarding mine reclamation, and I've added some  
20 emphasis, but you can see it basically mentions this issue  
21 that it would everyone be within the Board's jurisdiction,

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22 if they in fact qualified as types of recycling.

23 For the proposed resolution itself, it has

24 a couple of different things that it does. I have some

25 language in there, of course, explaining the need for

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1 clarification. It does maintain the previous language  
2 that was in the previous whereas clauses that were in  
3 Resolution 97-509 so the document may stand alone,  
4 modifies the first resolve clause to include all that  
5 detail.

6           And while we were at it, there was several  
7 types of handling listed in the original resolution. So  
8 we've included the detail for all of those verbatim from  
9 the original agenda item and that specifies that this  
10 resolution would supersede the previous Resolution 97-509.

11           So again, I wanted to emphasize that the  
12 point of this particular agenda item is not to at this  
13 point get to the issue of where those lines should be  
14 drawn or what is appropriate in terms of the regulation,  
15 but simply to clarify in the record that the Board in fact  
16 did not make any kind of final decision regarding this two  
17 years ago. And so that the focus again can be on the  
18 regulations themselves rather than the resolution from a  
19 couple years ago.

20           I don't know if you had any questions. I  
21 don't know if there's anybody that audience that wanted to

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22 speak to this issue.

23 CHAIRMAN EATON: Any questions?

24 Senator Roberti.

25 BOARD MEMBER ROBERTI: If we adopt this

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1 resolution, would there be any consequences on ending the  
2 issue as taxation of properties?

3 MR. BLOCK: In my opinion, this particular  
4 resolution would not affect a final decision on any of  
5 those issues that have come up in the context of the C&D  
6 inert regs. This is simply clarifying the action that was  
7 taken two years ago. It has been cited recently in some  
8 discussions that the Board already decided this issue, and  
9 in fact, the Board did not fully decide this issue a  
10 couple years ago. Gave some direction for moving forward,  
11 but left the decision making to be in the regulations  
12 themselves, and that's Agenda Item Number 5.

13 BOARD MEMBER ROBERTI: And that's what  
14 we're doing.

15 MR. BLOCK: Yes.

16 BOARD MEMBER ROBERTI: For those two years  
17 under what criteria did we operate, between the time that  
18 the board passed Resolution 97-509 and today?

19 MR. BLOCK: In terms of regulating mine  
20 reclamation sites?

21 BOARD MEMBER ROBERTI: Yes.

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22           MR. BLOCK: Basically in the status quo  
23 state. In other words, the issue of how to exactly deal  
24 with those sites has been essentially on hold while the  
25 regulation has been developed.

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1 BOARD MEMBER ROBERTI: Okay. Thank you.

2 CHAIRMAN EATON: Could you also just

3 briefly explain the proposed language for AB 59

4 requirements dated 8-3-99? Is that part of this item?

5 Maybe I'm -- no.

6 MR. BLOCK: Yeah. That's -- okay. It's in

7 Agenda Item Number 5.

8 CHAIRMAN EATON: Next item. Okay. Great.

9 All right. We have a number of speakers

10 out there.

11 Mr. Chuck White.

12 MR. WHITE: Thank you, Mr. Chairman,

13 Members of the Board. Welcome to Ms. Moulton-Patterson to

14 the first meeting. We look forward to working with you on

15 this and other issues that will be becoming before the

16 Board.

17 Waste Management commented on Resolution

18 97-509 as indicated in the transcript that's been included

19 in the packet. We certainly looked at the issue of inerts

20 and C&D materials, and our comments at the time was that

21 the Board should take a look at the spectrum and materials

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22 that are called C&D waste ranging from commingled C&D  
23 waste all the way to clean inerts. We never argued that  
24 inert waste should be regulated, only that it be right  
25 regulated.



1           However, Waste Management and others have  
2   relied very heavily on Resolution 97-509 as a very  
3   specific statement of Board policy from November of '97 to  
4   the present. This is particularly true with the payment  
5   of solid waste disposal fees at mine reclamation  
6   facilities. As the staff has pointed out, 97-509 states,  
7   "We believe, fairly unambiguously, the California  
8   Integrated Waste Management Board would not have  
9   jurisdiction over the use of construction and demolition  
10  inert debris for mine reclamation."

11           As I know many of you are aware, we are  
12  currently engaged in a dispute with the Board of  
13  Equalization regarding whether retroactive solid waste  
14  disposal fees are due on a mine reclamation facility we  
15  own in Southern California. I would like to go into some  
16  more information on that particular facility and this  
17  issue with the next agenda item, Number 5 which is to  
18  follow.

19           But key to this question is whether or not  
20  mine reclamation facilities handling solely inert  
21  materials have ever been regulated as a solid waste

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22 landfill. We believe they have not, and we believe that  
23 Resolution 97-509 is a statement that is consistent that  
24 fact, that they have never been regulated as solid waste  
25 landfills.

1           We are relying on and we have relied on  
2 Resolution 97-509 as one of the many reasons why solid  
3 waste fees should not be retroactively imposed on mine  
4 reclamation facilities that handle solely inert materials.  
5 We acknowledge that 97-509 was not necessarily the final  
6 statement of the Board on what would or would not be  
7 regulated on a go-forward basis. We do not argue that the  
8 board may modify 97-509 at any point in time on a  
9 go-forward basis, or may in fact adopt new regulatory  
10 requirements or regulations on a go-forward basis.

11           We do not object to your new Resolution  
12 99-392. We only ask that it be accompanied by a statement  
13 that indicates it is not intended to justify or support  
14 the retroactive application of regulatory requirements  
15 including the imposition of disposal fees.

16           There is little doubt that inert facilities  
17 have been regulated in a fairly broadly inconsistent  
18 fashion throughout the state. It would be very helpful  
19 for Resolution 99-392 to state that once this is clarified  
20 by final rulemaking, regulatory activities, including the  
21 application of solid disposal fees, should be applied only

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22 on a go-forward basis.

23 Finally, we recommend that you might

24 consider delaying final determination of this issue until

25 also after Item 5 has been heard so you will be able to

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1 take advantage of the full spectrum of discussion on both  
2 Items 4 and 5 before you decide what course of action you  
3 take on this particular resolution.

4 Thank you very much.

5 CHAIRMAN EATON: Any questions of  
6 Mr. White?

7 BOARD MEMBER JONES: Mr. Chairman.

8 CHAIRMAN EATON: Mr. Jones.

9 BOARD MEMBER JONES: Just one because -- I  
10 mean, we're going to get into it more I think in the next  
11 item, but I think that -- I think that that resolution  
12 that we had talked about. We had subsequent meetings, one  
13 was on January 22nd, which clearly stated, if you look at  
14 the transcript of that day, that this was still not a  
15 determined issue.

16 MR. WHITE: Exactly.

17 BOARD MEMBER JONES: So it wasn't like 509  
18 was set in concrete because what we did that day is we  
19 said hold off on these things as we get more information.  
20 One of the issues that came up that day and later in  
21 January, and Mr. Frazee actually brought it up, was that

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22 not every hole in the ground is subject to Mine

23 Reclamation Act.

24 All those that are historic, that are

25 existing prior to the enactment of the SMARA Act, there's

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1 possibility that some of these are being refilled without  
2 any supervision, and then he went on to explain that the  
3 Eagle Mountain site falls into that category, as do the  
4 three sites that we're talking about. They're all  
5 pre-SMARA.

6           When we had the discussions, I remember a  
7 young gentleman from either Tygart or Granite, because all  
8 the Board Members were making a definitive explanation  
9 that inert and C&D shouldn't be considered in the same  
10 breath as to having no health and safety issues. And I  
11 think that that was real important to the discussions and  
12 that was one of the reasons that we left it alone, to come  
13 back in the C&D regs.

14           I think out of fairness we need to talk  
15 about what happened in January, what happened subsequently  
16 to that, because I understand your issues, but I think  
17 that what we did was try to take an encompassing look  
18 through the C&D regs which was actually the request of the  
19 stakeholders in the room. It wasn't our request, it was  
20 the stakeholders in the room to ask us to make those  
21 definitions as we went through the process.

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22 But I also think the pre-SMARA discussions  
23 were pretty involved, both that day and in January, about  
24 just what is, you know, a mine reclamation plan. So, I  
25 mean, those who didn't have to have it, they're an

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1 opportunity because you don't have to estimate the whole.

2 You know it and I know it. So, you know, I want to get

3 resolution in this, but I think it's fair to characterize

4 it as it was --

5 MR. WHITE: And to reiterate my comment, we

6 have never argued that the Board couldn't have the

7 responsibility for your exercise to regulate inerts or C&D

8 materials or whatever, but basically you're on record as

9 saying, at least in '97 and forward, you would not

10 exercise jurisdiction over these kinds of facilities.

11 If you choose to change that, fine. Go

12 forward and adopt a new resolution or regulations that

13 would do that, but just don't do it in such a way that

14 would imply that there may be credence to the retroactive

15 application of fees to facilities that have never been

16 regulated as solid waste landfills.

17 In fact, if the resolution going forward

18 could clarify that and give further comfort to us, that it

19 was not the Board's intent to apply these retroactively,

20 it would be very much appreciated.

21 BOARD MEMBER JONES: Okay. I understand

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22 that, but I think part of what we were talking about that  
23 day wasn't the fees. It was what are the impacts on  
24 health and safety and what was the appropriate level of  
25 environmental protection. This just happened to come

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1 along after.

2 MR. WHITE: I agree.

3 I would like to come back on Item Number 5.

4 CHAIRMAN EATON: Absolutely. No question  
5 about it.

6 Pat Shenks from the California Mining  
7 Association, Vulcan Materials.

8 Just for those -- excuse me, Ms. Shenks. A  
9 number of you have written on your slips for 4 and 5, and  
10 I will keep track of those and go back, per what Mr. White  
11 and Ms. Shenks also fall in that category.

12 MS. SHENKS: Thank you.

13 CHAIRMAN EATON: I appreciate that you have  
14 an opportunity to be heard on both.

15 MS. SHENKS: Good morning, Chairman Eaton  
16 and Members of the Board. My name is Pat Shenks. I'm  
17 with the law firm of Kutchen, Doyle, \*\*\* and Anderson,  
18 speaking this morning on behalf of the California Mining  
19 Association and Vulcan Materials Cal-Mat Division.

20 I believe that you have all received in  
21 your packet a copy of a letter that the California Mining

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22 Association sent to you, or sent to Mr. Eaton, on Friday.

23 That letter was addressed to Item Number 5, and I would

24 like for you to take that letter into consideration also

25 with regard to Item Number 4.

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1           Today I don't intend to repeat the comments  
2 made in the letter, but I would like to supplement the  
3 letter and also to emphasize some key points. And I will  
4 speak at this point only to the proposed regs with regard  
5 to modification of the resolution, and then speak later  
6 with regard to the regulations.

7           First, the proposed so-called clarification  
8 of Resolution 97-509 attempts to put a gloss of  
9 uncertainty on the resolution, which comes as quite a  
10 surprise to those of us who have been following the  
11 development of the construction and demolition debris  
12 regulations since the resolution was first adopted and  
13 since the notice of proposed rulemaking was first issued  
14 in November of '97.

15           In the November '97 hearing on the  
16 resolution and in the January hearing that Mr. Jones  
17 refers to, the Board Members and members of the public who  
18 commented did note their uncertainty concerning the  
19 definition of inert materials that would be used to define  
20 those mine reclamation sites that were outside the scope  
21 or the proper scope of the Board's jurisdiction. We don't

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22 object to that and feel that, in fact, that's an

23 appropriate inquiry for the Board to make.

24           However, the fact that mine reclamation is

25 a productive reuse of inert materials was not an issue, to

1 our knowledge, that had been raised by the Board and  
2 previous meetings, and certainly was not an issue that was  
3 raised at the time that the resolution was adopted  
4 because it was not only adopted based upon the definition  
5 of recycling, but also based upon the Board's previous  
6 determinations with regards to mine reclamation sites.

7           So as Mr. White points out, to engage in  
8 this so-called clarification of Resolution 97-509, I think  
9 the Board is actually changing the determination that it  
10 made.

11           I think that this is based -- appears to be  
12 based on the staff report that suggests that there is  
13 actually no difference between mine reclamation sites and  
14 solid waste landfills. We think that's wrong. We think  
15 it's wrong as a matter of law and we think it's wrong as a  
16 matter of policy.

17           A solid waste disposal facility is designed  
18 and operating as a safe repository for solid waste. The  
19 mine reclamation site, on the other hand, is a depleted  
20 mining site that may require backfilling for mine  
21 reclamation purposes in order to return the land used for

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22 mining to commercial or other productive use for the

23 communities in which the mining occurred.

24           As the staff points out in its report, a

25 solid waste landfill may also have productive uses after



1 closure, after it's filled up, but that's not the purpose  
2 of a solid waste landfill. It's not the primary purpose  
3 of a solid waste landfill. It is the primary purpose of a  
4 mine reclamation site.

5           Because of the different functions served  
6 by solid waste landfills, which are there to receive  
7 municipal solid waste, and mine reclamation sites, which  
8 are there to reclaim land, the public policy incentives  
9 should be designed to preserve the capacity of solid waste  
10 landfills while encouraging the reclamation of mine and  
11 land.

12           And the problem is that if you get the  
13 policy incentives wrong -- and I will comment specifically  
14 on the changes in the resolution which I think do that --  
15 if you get policy incentives wrong, you encourage people  
16 to send inert materials to solid waste landfills where  
17 they can be accepted for so-called beneficial reuse  
18 without being subject to the fee and you discourage them  
19 from going to mine reclamation sites where, under the  
20 Board's current interpretation of the fee -- at least  
21 based upon Mr. Chandler's memo to the POE -- they would be

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22 subject to the fee.

23 I think this would also create incentives

24 for unlawful disposal because there will no longer

25 inexpensive ways for construction companies and others to

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1 manage construction and demolition debris.

2 I think it's very important, before you  
3 attempt to change the resolution that you reached in 1997,  
4 to get the policy issues on the table and to consider them  
5 very carefully so that you encourage mine reclamation, you  
6 discourage inert materials going to solid waste landfills  
7 where you use up scarce capacity, and you avoid the  
8 disincentive of overlapping regulation, fees and costs  
9 that are inappropriate and unnecessary for very low risk  
10 sites.

11 Because we don't believe that the staff  
12 report has properly analyzed these policy issues, we would  
13 ask you to take no action today with regard to Resolution  
14 97-509.

15 And the reason I ask you to take no action  
16 is because the language that's proposed by the staff  
17 essentially prejudices the issue. If you take a close look  
18 at the language, it says, the Board will not have  
19 jurisdiction over mine reclamation sites, provided that  
20 they constitute a productive use of the inert material --  
21 I'm paraphrasing a little bit -- but do not fit within the

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22 definition of solid waste disposal or handling but in fact

23 qualify as a type of recycling.

24           So there are two requirements there -- that

25 it not constitute solid waste disposal, and that it meet

1 the definition of recycling. If you look at the  
2 definition of solid waste disposal, it's simply the final  
3 deposition of solid waste on land.

4           So you have essentially prejudged the  
5 issue. You have decided here, with this language, that  
6 mine reclamation sites are within your jurisdiction and  
7 subject to regulation and solid waste disposal facilities,  
8 and I think that's wrong. I think you need to think about  
9 that carefully and go back to the staff before taking any  
10 action on this item.

11           Thank you.

12           CHAIRMAN EATON: Any questions?

13           BOARD MEMBER JONES: Mr. Chairman. I think  
14 that's what we're asking, though, is that if a mine  
15 reclamation project is taking in solid waste, then we do  
16 have the authority to regulate it.

17           MS. SHENKS: I think the question is --  
18 clearly you have authority over solid waste management. I  
19 think the question here is what is the appropriate level  
20 of regulation for mine reclamation sites.

21           We have no objection to your narrowing the

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- 22 type of inert material that can be used for mine
- 23 reclamation purposes without the mine reclamation site
- 24 becoming a solid waste landfill. We have no objection to
- 25 your inspecting sites or causing Local Enforcement

1 Agencies to inspect sites to assure that only those inert  
2 materials which you deem appropriate for mine reclamation  
3 go to those sites.

4           What we do object to is overregulation,  
5 treating mine reclamation sites as if they were a solid  
6 waste landfill. And that's not only just the Integrated  
7 Waste Management fee issue, but it's also the burdensome  
8 additional regulation on top of SMARA and local land use  
9 controls and the cost of doing that.

10           BOARD MEMBER ROBERTI: Mr. Chairman.

11           CHAIRMAN EATON: Senator Roberti.

12           I'm sorry. Are you finished, Mr. Jones?

13           BOARD MEMBER JONES: I just had two.

14           Part of the reclamation plans that -- I  
15 mean, part of the reclamation of a mine could be to turn  
16 it into a lake; correct?

17           MS. SHENKS: I don't know that for certain.

18           BOARD MEMBER JONES: Yeah. If you identify  
19 it, you could turn it into a lake. The other thing that  
20 you could do is put dirt down on the spaces and plant  
21 trees and use it as a recreational area, depending on the

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22 kind of work you wanted to do.

23           So reclamation is not just using that land

24 and filling it up to a surface.

25           MS. SHENKS: That's correct.

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1           BOARD MEMBER JONES: And you're saying on  
2 your site, not CMA sites, but the Vulcan sites that you  
3 have, are they pre-SMARA or post-SMARA?

4           MS. SHENKS: Some of both, but I think that  
5 there's a misunderstanding about pre-SMARA sites. You  
6 seem to assume that there's no regulation at all of  
7 pre-SMARA sites, and I think it's -- historically local  
8 land use agencies have, or local government agencies  
9 exercising land use authorities have, regulated pre-SMARA  
10 sites. They need -- they're regulated as part of their  
11 conditional use permits for mining.

12          BOARD MEMBER JONES: Unless they were so  
13 old they didn't come into that. Some local governments  
14 didn't put conditions for reclamation.

15          MS. SHENKS: I think -- I think that we  
16 should talk about what is wrong first, what needs to be  
17 fixed, and how should the Solid Waste Management Board  
18 assert its jurisdiction in the context of other regulatory  
19 schemes that are already in place. And I think that as --  
20 I think the Deputy Director of the Department of  
21 Conservation said in his letter to you on Friday, this

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22 really hasn't been done yet. We haven't had this  
23 communication yet. And it's very important because, as  
24 you recall, when SMARA was adopted in '76 and when the  
25 legislation revisited it again in 1990, the legislature

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1 was very, very clear about maintaining local control over  
2 land use decisions concerning mining and mine reclamation.

3           So while you might like to turn a mine  
4 reclamation site into a lake, Irwindale probably doesn't  
5 want a lake. It wants productive land, so -- and that  
6 decision really needs to be made together with the  
7 community in which the mine resides.

8           But I just would ask that we not take  
9 action today because I don't think these issues have been  
10 properly vetted, and as we'll suggest on Item Number 5, we  
11 would like you to table everything for the moment. Let's  
12 go back, workshop these issues, and come back with a set  
13 of regulations that are appropriate for the level of risk  
14 and the level of existing regulation of these facilities.

15           CHAIRMAN EATON: Senator Roberti.

16           BOARD MEMBER ROBERTI: I appreciate your  
17 testimony. There's something, however, that confused me a  
18 little bit.

19           You're saying categorically that if we  
20 adopted these resolutions, it would cost more to fill a  
21 mine reclamation site than it would a landfill?

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22 MS. SHENKS: It would not cost -- well, it  
23 would cost more to place inert material in a mine  
24 reclamation site than it would to take inert material to a  
25 municipal solid waste landfill where it can be received

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1 for beneficial reuse. What I'm concerned about --

2 BOARD MEMBER ROBERTI: I don't know if I  
3 accept that.

4 MS. SHENKS: The beneficially reused  
5 material is not subject to the fee.

6 BOARD MEMBER ROBERTI: Is that the only  
7 considerations being subject to the fee?

8 MS. SHENKS: It's a big consideration.

9 BOARD MEMBER ROBERTI: I understand that.  
10 Is it the only consideration?

11 MS. SHENKS: It's not the only  
12 consideration. As I mentioned, there's not only the fee,  
13 but there's the additional overlapping regulation and the  
14 cost of the regulation, and we'll get into this when we  
15 talk about Item 5. My point on this Item 4 with regard to  
16 the change in the resolution is we should not take action  
17 which is going to preclude and prejudge your issues, the  
18 issues in Item 5. And based upon the language that the  
19 staff has proposed here, I think it would. I think you  
20 need to keep yourself open.

21 BOARD MEMBER ROBERTI: Maybe staff can help

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22 us when they get their turn up and that is what the other

23 considerations are or the other cost factors, because I

24 don't know if I accept just strictly this, per se, if we

25 adopt these resolutions, it will be more expensive to fill

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1 in the mine reclamations.

2 MS. SHENKS: If a mine reclamation site is  
3 paying the Integrated Waste Management fee on \$1.34 per  
4 ton, they are preparing site facility plans, they are  
5 providing financial assurances for closure and  
6 post-closure care, and all of those things cost money.

7 BOARD MEMBER ROBERTI: Yes, I understand.  
8 But in effect, is your position that we have -- if you  
9 don't charge the fee, you don't get the services the fee  
10 entails, one of which is closure and post-closure  
11 considerations, and you don't think a landfill -- rather,  
12 a mine reclamation site should be subject to those.

13 MS. SHENKS: The mine reclamation site that  
14 receives truly inert material, which is mostly soil and  
15 concrete and cured pavement, that's really what it is,  
16 doesn't require the level of closure and post-closure care  
17 or financial assurances.

18 BOARD MEMBER ROBERTI: I agree with you,  
19 but with the premise of using the word "level." I don't  
20 know that I would accept that it would require no closure  
21 or post-closure care.

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22 MS. SHENKS: I think you need to ask to

23 what extent that is already --

24 BOARD MEMBER ROBERTI: I think you're going

25 to have to help us on this issue.

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1 MS. SHENKS: By the Department of  
2 Conservation, by Mining and Geology --

3 BOARD MEMBER ROBERTI: Do most of your  
4 clients accept only inert material or do they accept C&D?

5 MS. SHENKS: Construction and demolition,  
6 there are so many definitions floating around here. The  
7 material that Cal-Mat Pit Number 2, for example, are  
8 concrete, including any reinforcing that's in the  
9 concrete, and cured pavement, and dirt. That's -- that's  
10 what we accept. We're not in the business of accepting  
11 tires and auto shredder fluff, which are the other types  
12 of waste that have been discussed here.

13 BOARD MEMBER ROBERTI: And various other  
14 things. I think mine reclamation projects in some places  
15 accept wood waste and --

16 MS. SHENKS: We're not accepting wood  
17 waste. As I say, I think that's the key here. The key  
18 here is for the Board to carefully define what is  
19 appropriate for use in mine reclamation sites that the  
20 Board places outside its jurisdiction because there's no  
21 need for it to regulate those sites.

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22 BOARD MEMBER ROBERTI: While you're still

23 up, do you mind if I ask staff to sort of help us along on

24 these two questions?

25 The witness is indicating that there is

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1 minimal concern to this Board if a mine reclamation site  
2 accepts strictly inert material -- and I hope I'm not  
3 mis-paraphrasing you -- and that our closure and  
4 post-closure procedures -- will it be minimally involved  
5 if totally inerts are taken in? Is that correct? Or do  
6 we have another way of looking at it?

7 MR. BLOCK: Let me go ahead and try and  
8 answer that. I was actually waiting to respond a little  
9 bit. A couple of different issues were raised.

10 The first one that I think I need to refer  
11 to is without knowing, of course, the particular financial  
12 issues that are being raised for these particular sites,  
13 the implication has been made that a mine reclamation site  
14 would not be able to accept inert material to use for some  
15 on-site construction work or something other than just  
16 simply putting the material in the pit, whether it's road  
17 base construction or that sort of thing, where that would  
18 be done at a Class 3 site.

19 I don't believe that's the case, and in  
20 fact, the three facilities that have been referred to --  
21 actually I don't think all three have been, but there are

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22 three permitted sites of this type -- have been reporting  
23 waste disposed at their sites under our disposal reporting  
24 system for the last -- since 1995. And in fact, part of  
25 those reports distinguishes between material that is going

1 into the pit and counts as disposal and material that is  
2 not going into the pit that's being used on-site for road  
3 base and construction. So in their own documentation  
4 they're indicating they've got different uses at the site.  
5 So I'm not sure why that distinction is there.

6           In terms of the closure post-closure issue,  
7 current statute and regulation would not -- if a site is  
8 an unclassified site, which is going to primarily be an  
9 inert site, it's not related to whether it's mine  
10 reclamation or not, just an inert site -- they are not  
11 subject to the closure or post-closure requirements or the  
12 financial assurances, and the three sites that we're  
13 talking about are not.

14           The way the statutory structure is set up,  
15 they're defined as -- there's sort of two different terms  
16 of the use, solid waste disposal site, solid waste  
17 disposal facility, which requires a permit. And there's a  
18 subset of that title to the statute, solid waste landfill.  
19 And so when these sites come forward, it's been indicated  
20 they're unclassified sites. They're not solid waste  
21 landfills, which means they're not subject to closure

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22 post-closure, but they are solid waste disposal

23 facilities. That's the only reason they were getting a

24 permit in the first place.

25           Having said that because I thought it was

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1 important to respond to those two things, I just feel, at  
2 least for the record, I think it's important in terms of  
3 the agenda item that I've written what I brought forward  
4 before the Board today, that there's certainly no intent  
5 at all to prejudge this issue. The language that's in the  
6 resolution mirrors the way this analysis has been done in  
7 the past. At the meeting that was done and the like, and  
8 it is not whether it's a question of healthy lawyer  
9 paranoia to think this is written in such a way to  
10 prejudge the issue. Perhaps that's there, but it's  
11 certainly not written in a way that prejudges the issue,  
12 this language. I was particularly careful --

13 BOARD MEMBER ROBERTI: Prejudges the tax  
14 issue.

15 MR. BLOCK: Well, that's the second part I  
16 was going to say. There's actually nothing that talks  
17 about the tax issue one way or the other. It was not part  
18 of the discussion in 1997 and was not part of this  
19 language. I was very careful to take the exact language,  
20 even though I would liked to have modified it now that a  
21 couple of years have passed and we've learned a few

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22 things, as you're going to talk about in Agenda Item 5.

23 It's very careful to use the exact language that we used

24 out of the original agenda item and the analysis that was

25 there so that we are not prejudging.



1           The intent of this item is simply to get  
2 past this issue of the Board having already decided this  
3 issue when, in fact, it had not. If it would be helpful  
4 to -- I think I put that on the record in terms of my  
5 intent in terms of this. The Board can certainly look at  
6 adding language specifically saying this doesn't say  
7 anything one way or the other regarding some of these  
8 issues. You could certainly add that as well. I  
9 certainly was not going to do that. I was simply trying  
10 to do a paperwork fix. I think I need to make it clear on  
11 the record there were certainly no underlying motives on  
12 my part in bringing this item forward.

13           BOARD MEMBER ROBERTI: Mr. Chairman.

14           CHAIRMAN EATON: Senator Roberti.

15           BOARD MEMBER ROBERTI: You know what I  
16 could use, somebody on staff to inform me -- in my mind,  
17 mine reclamation ought to be in the same position as a  
18 landfill, if after closure and post-closure we signal to  
19 whoever may be using that property that it is there and  
20 available for beneficial use roughly to the same extent as  
21 other properties might be.

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22           Do we do that in our closure and  
23 post-closure processes? Would it operate as that kind of  
24 signal to somebody who is operating the property or a  
25 subsequent prior, or the community, that this property is

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1 now available for beneficial reuse roughly to the extent  
2 that other properties in the general area would be  
3 available? If not, then what do we do? What does closure  
4 and post-closure signify? I personally, for my own  
5 decision, sort of need that.

6 CHAIRMAN EATON: Perhaps we can ponder  
7 that question. We have a number of speakers. I don't  
8 think the Senator was trying to put you on the spot.

9 BOARD MEMBER ROBERTI: Before I vote on  
10 this item, I would sort of like --

11 MS. SHENKS: Mr. Chairman, if I might  
12 respond to a couple of remarks that Bob made.

13 CHAIRMAN EATON: Please.

14 MS. SHENKS: In the quarterly survey  
15 reports, when we distinguish between what is recycling and  
16 what is deposited on the land, we're distinguishing  
17 between concrete that is crushed and then taken off-site  
18 for road base and that sort of thing. We're not trying to  
19 distinguish between material that's actually used at the  
20 mine reclamation site for cover or for road building or  
21 that sort of thing. We've never been subject to the fee

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22 before, so there was no incentive to do that. Clearly

23 we're looking at that, but should not interpret the

24 quarterly survey report as doing that.

25 Second, he suggested that the proposal

1 would not make mine reclamation sites subject to both  
2 post-closure and closure. That's not the way I read Item  
3 Number 5 regulations, and we can talk about that later.  
4       The third point is it does prejudice the  
5 issue and is not consistent with the November 1997  
6 discussion. If you look at the staff report from 1997  
7 when the resolution was adopted, it provided that either  
8 mine reclamation falls within the definition for recycling  
9 or based upon Integrated Waste Management Board  
10 determinations in which it determined that the Board did  
11 have not jurisdiction over mine reclamation when  
12 waste-derived materials were used.

13       So there were alternatives there, and the  
14 problem with the way it's currently drafted is it drops  
15 the second alternative and adds another requirement that  
16 it not constitute solid waste disposal, which is defined  
17 in the statute as simply deposition of waste material on  
18 land.

19       Again, we ask you give this more thought  
20 and let's not take action today.

21       CHAIRMAN EATON: Any further questions?

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22 BOARD MEMBER JONES: Mr. Chairman.

23 CHAIRMAN EATON: Mr. Jones.

24 BOARD MEMBER JONES: I don't want to

25 belabor this, but I just want to back up those

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1 discussions.

2           One of the reasons we talked about mining  
3 waste and mine reclamation was that in the Mining Act,  
4 anything that was used at a mine could be deposited in  
5 that hole as part of reclamation including buildings,  
6 vehicles, oil drums, all that stuff. That's why we took  
7 that completely out of the definition and said we can't  
8 allow that to happen because of the broad definition of  
9 what mining waste is, and it's anything that's used on the  
10 site.

11           MS. SHENKS: I think again that we should  
12 probably talk about what constitutes appropriate material  
13 for use, but let's not throw the baby into the bath water.

14           BOARD MEMBER JONES: I understand.

15           MS. SHENKS: And I think that's the  
16 discussion we need to have. We need to have that first  
17 and then we can talk about appropriate levels of  
18 regulation based upon the level of risk presented by mine  
19 reclamation.

20           BOARD MEMBER JONES: Right. But part of --  
21 the reason I bring that up, that was part of the

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22 discussion that preceded this vote, which clearly it was  
23 not -- we hadn't defined anything other than we were going  
24 to work on it through the regs because of those things,  
25 because we didn't agree with the Water Board definition.



1 10 percent of other material on a site that brings in  
2 concrete that weighs a ton a yard, if it brings in 500  
3 yards, that's a heck a lot of garbage that can go in  
4 there.

5 At that time we had this discussion we did  
6 not feel comfortable with the Water Board discussion  
7 because clearly while it may fall under their definition  
8 of inert, it creates a health and safety issue at closure  
9 post-closure.

10 MS. SHENKS: I understand that and we're  
11 very willing to work with you on that point.

12 Thank you.

13 CHAIRMAN EATON: Thank you. Charlie Ray,  
14 Construction Materials Association of California.

15 MR. RAY: Most of my comments are directed  
16 towards Item 5. I don't know if you want me to say that  
17 now.

18 CHAIRMAN EATON: I would appreciate it if  
19 you would just kind of hold off.

20 MR. RAY: Okay.

21 CHAIRMAN EATON: Thank you.

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22 Ms. Denise Jones.

23 MS. JONES: Good morning, Mr. Chairman,

24 Members. Denise Jones, I'm the Executive Director of the

25 California Mining Association. I'll keep my comments

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1 brief on Item 4.

2           We would request that you do not take  
3 action on that at this time. We do believe it's a  
4 significant modification and it will have an impact on  
5 those mine operators who have had reclamation plans  
6 approved since the adoption of your resolution to this  
7 date.

8           We've been talking a lot up to this time  
9 about facilities that bring in, that import C&D or other  
10 inert waste. What this Board has not focused on, and we  
11 believed would not focus on until we received the notice  
12 of this clarification and the proposed changes in  
13 resolution, are those mine sites which use on-site -- that  
14 dispose of their on-site C&D waste and inert waste at  
15 their sites.

16           SMARA requires that all buildings and  
17 structures and roads on a mine site be decommissioned at  
18 the end as part of their reclamation, which is a closure  
19 and post-closure management plan for that site. Many  
20 operations sell their buildings for scrap. They're torn  
21 apart, taken off site, all their old equipment is sold and

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- 22 sold off site, but they are required by their reclamation
- 23 plan to break up and dispose of the foundations and other
- 24 concrete parts of that buildings and structures by
- 25 breaking them up and burying them on-site.

1           The proposed change in both this resolution  
2 and Item 5 would prohibit small operations, those who  
3 already have approval to do that, from disposing that  
4 without receiving an additional permit through the Waste  
5 Board and paying additional fees through this operation.

6           So while we focused on approximately the 80  
7 sites that there may be Importation and jurisdiction  
8 between your Board and the Surface Mining and Reclamation  
9 Act, there are 1500 mine sites in the state of California  
10 that will have to review their reclamation plans to be  
11 sure they're somehow not placing inert materials on their  
12 sites.

13           So we believe this clarification would have  
14 a dramatic impact, and we would simply ask that you delay  
15 action at this time.

16           CHAIRMAN EATON: Any questions of  
17 Ms. Jones? Okay. Bob Miller. Is Mr. Miller here of  
18 Copperopolis? I think I pronounced that properly.

19           MR. MILLER: Ladies and gentlemen, I thank  
20 you for your time. My name is Bob Miller. I live in  
21 Copperopolis. I'm here as a concerned citizen. I've been

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22 following the California Asbestos Monofill in the little

23 town of Copperopolis. I ask, has anybody been to the

24 little town of Copperopolis to see this mine site?

25 BOARD MEMBER ROBERTI: In Calaveras County?

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1           MR. MILLER: Calaveras County, right. If  
2 you'll notice, that first piece of paper I put there with  
3 our document shows the burying of rubber tires. This mine  
4 shaft is a very, very deep shaft. It's about 500 feet  
5 deep. It goes below the level of Lake Pellet. It's  
6 within a mile of the Stanislaus River that feeds Lake  
7 Pellet, but also feeds the water supply for the prison at  
8 Sierra Conservation Center, (inaudible) Calaveras County  
9 Water District, and the water now also is feeding down to  
10 the city of Stockton. Some 300,000 people are affected by  
11 this water.

12           My main concerns are air and water  
13 pollution in case there is a fire. The CAM employees,  
14 California Asbestos Monofill employees, are the first  
15 responders in case there is a fire. I think I'm getting  
16 over into Item 5, but I wanted to point out the  
17 importance.

18           We recently had -- I should back up just a  
19 second and say in the initial permit to bury asbestos  
20 waste, in the bottom of this pit was one test hole with  
21 two packer tests, and civil engineers certified that it

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22 would not pass asbestos fibers. The County issued them a  
23 permit to bury asbestos waste, and at that particular  
24 point, in the flow chart over there, you'll see how the  
25 permitting process took place.



1           In that process, I and Sheldon Toso  
2 (phonetic) here represented Booker Flat Homeowners'  
3 Association, some 500 members, and we drafted a letter  
4 with a bunch of conditions to be imposed on that. That  
5 letter somewhat was addressed. There was a lot of loose  
6 ends, but if you picture this great big pit that has  
7 asbestos waste in the bottom of it, if you look at the  
8 diagram, and down below sea level, down below the level of  
9 405, all it is is compaction and tier on top of tier on  
10 top of tier. This has been determined that it would hold  
11 back asbestos waste, but there's no provision that says it  
12 will hold back liquid rubber in case there's (inaudible)  
13 reaction. This creates a problem.

14           Now, I do not have the support of the  
15 Supervisors or any County officials at Calaveras County  
16 because they get six percent of the gross off of this  
17 facility. There's ten employees employed there, or have  
18 been, so I'm not the good guy in the neighborhood. I hold  
19 the representation of the Booker Flat Homeowners'  
20 Association, some 500 members. I also have the support of  
21 the Copper Cove Homeowners' Association, some 1600

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22 members.

23           So what I'm trying to say to you people is

24 there's big gaps in here. If you'll look at the picture,

25 that is a mine. There's one access to the bottom that

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1 serpentine all the way around. There's no provision for  
2 fire safety down there. In the documents prepared by  
3 California Integrated Waste Management, they specified  
4 that they will be haz-oper trained, provide a bulldozer,  
5 two skip loaders, and trucks to put on top of the fire.  
6 But there's no mention of self-contained drinking  
7 apparatus, no enforcement of the haz-oper training, and I  
8 belong in the community of Copperopolis, and we have  
9 basically a volunteer fire department.

10 Just recently you put 10,000 tons of rubber  
11 tires, baled, into our community, and that's what shows  
12 in your picture there. They were supposed to be, in the  
13 documents that we helped prepare, shredded tires buried in  
14 cells, 350 feet wide, 250 feet long, maximum 20 feet high.  
15 Those pictures do not show those cells being constructed.  
16 They're supposed to be covered at the end of each shift,  
17 and they're supposed to be monitored for fire or smoke.

18 Under the Health and Safety Code it says  
19 here, "The legislature finds and declares that the public  
20 has the right to know about the acute hazardous material  
21 accident risks that affect their health and safety. The

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22 legislature finds and declares that the public has a right

23 to participate in decisions about risk reduction.

24 (Inaudible) and measures are to be taken to reduce the

25 risk of severe or acute hazardous materials." I don't

1 think that's been addressed in our local community.

2 Under the terminology "bailed tires," it  
3 shows up in those pictures. At the time we didn't see  
4 bailed tires.

5 I should back up and say there's 16 truck  
6 loads a day of bailed tires which come to our community.  
7 It's been said that that will take 55 years to fill that  
8 pit. The decisions you make today affects your children,  
9 my children, and my grandchildren.

10 Another thing that's in there that's a  
11 little bit confusing to us is the sentence "For the  
12 purpose of this section, all approvals under citing and  
13 operation criteria shall be issued by the sole enforcement  
14 agency with the exception of 14 CCR Division 7." That  
15 says to me I don't have a leg to stand on the complaint.

16 My grandfather, when I was a young man,  
17 says, "Son, leave the soil in a better condition than you  
18 found it." Little did I realize at the time that I was  
19 putting cow manure in the manure spreader. Today I think  
20 I'm looking at rubber tires going into a pit. Am I  
21 leaving it in better shape than I found it?

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22           The next thing I would like to cite in here  
23 is that -- Mr. Smith here sent me a note that says that  
24 they've been suspended up there and will not be doing any  
25 further taking in of tires in the near future. One

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1 paragraph in here says if they haven't taken tires for 30  
2 days, they should put a four-foot fill over the top of it.

3           Remember now, this fill material is  
4 asbestos tailings. Over at Turlock, the Tracy fire, you  
5 put many, many tons of contaminants into the air, cancer  
6 causing. Are we also going to put asbestos tailings into  
7 the air in case there's a fire? I think so because these  
8 walls are almost vertical. As the air comes down, it's  
9 going to pick up the mine ponds and go right up into there  
10 and affect our water supply.

11           Oh, a year ago last July, the picture on  
12 the lower right-hand side is huge, great big earth-moving  
13 equipment tires that came into the site. I don't know  
14 specifically that they went to the site, but they were  
15 packed into the little community of Copperopolis right  
16 next to grass. Grass is what started your Tracy fire. We  
17 could have had the same mess right here. I'm told that's  
18 not going to happen anymore, but I feel that somebody  
19 needs to get on top of enforcement.

20           Now, regarding how things happen, we said  
21 in our document that no more tires would be delivered to

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22 the job site. On July the 3rd, the Health Officer in  
23 Calaveras County issued a statement that says, "If waste  
24 tires are to be accepted as standard prior to disposal,  
25 they shall do" this, this and this, and that document went



1 through the system, came back with a Waste Management  
2 05-T-10726, referencing 97-0506 that says they can store  
3 46,300 tires on one and a half acres, waiting to be  
4 shredded. This is a big pile of tires sitting there,  
5 waiting to be shredded.

6 CHAIRMAN EATON: Mr. Miller, with regard to  
7 the issue that's at hand, we're also speaking really to  
8 construction and demolition debris --

9 MR. MILLER: Yes. I hear what you're  
10 saying.

11 CHAIRMAN EATON: -- versus tires. If you  
12 could kind of stay on that issue of construction and  
13 demolition, it would be greatly appreciated. That's the  
14 issue.

15 MR. MILLER: Reference though the fact it  
16 came from the asbestos modified EIR got us to where we are  
17 up there.

18 Thank you for your time.

19 CHAIRMAN EATON: Thank you.

20 Senator Roberti.

21 BOARD MEMBER ROBERTI: The industry

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22 representatives and the other witnesses, such as this  
23 gentleman, are talking about different kinds of inerts or  
24 C&Ds, and everything that this witness has said I agree  
25 with and I think should come within our purview.

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1           What the industry representatives were  
2 saying, I think, was that they were talking about the  
3 inert inerts, as opposed to the ones we sort of, by  
4 definition, call inerts but really aren't because somebody  
5 somewhere had the muscle to define it as inert when it  
6 really wasn't.

7           I don't believe that rubber is inert. I  
8 truly believe at some millenium it's going to break down  
9 and it certainly is not inert because it's combustible,  
10 about as combustible as anything can be. And some of  
11 these other things we had, even under the "tie bay" such  
12 as wood ash might pose some problems, too.

13          Now, the industry representatives were  
14 saying that they would be willing to work with the Board  
15 on a definition where we're really talking about inert  
16 inerts -- my words. That might have some weight with me  
17 if, at the same time when we talk about closure and  
18 post-closure, we're not signifying that everything is fine  
19 as far as other questions are concerned, such as the  
20 stability of the land. I don't know.

21          My own feeling is, and just strictly as a

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22 layman's layman, that when you're talking about filling a

23 mine reclamation site for beneficial use, the only

24 beneficial use I can think of is an undulating golf course

25 and --

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1 CHAIRMAN EATON: I think I played that one.

2 (Laughter)

3 BOARD MEMBER ROBERTI: I can't think of

4 anything else where there would be fill.

5 MR. MILLER: When this site, this pit gets

6 filled, there's to be a lake on top of it.

7 BOARD MEMBER ROBERTI: That's nice.

8 MR. MILLER: One day you can drive your

9 golf ball across there.

10 BOARD MEMBER ROBERTI: So, good point.

11 Maybe people can talk about this. I guess there is some

12 point where if you're filling the mine reclamation site

13 with absolutely inert product, and we haven't signalled in

14 our closure process that the land is stable for beneficial

15 use, then I could say it shouldn't come within our

16 purview.

17 Everything else, based on what I've heard,

18 should come within our regulatory purview. Certainly

19 anything that fills with tire or wood, which are very

20 combustible materials, should come within our purview,

21 and -- but I do see one, an area out there maybe where the

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22 industry has made a case -- I have no idea to know whether

23 this is a significant area as far as their filling of mine

24 reclamation sites is concerned or whether it's an

25 insignificant area, because from what I gather, every

1 company that has one of these mine reclamation sites fills  
2 it differently. So there may be some out there.  
3           Maybe there are significant sites where  
4 really it isn't coming within our purview, but right now  
5 my bias is that's the minority of sites, and I think what  
6 this gentleman talks about has to be absolutely  
7 accentuated and punctuated. If things are being filled  
8 with tires or wood waste or whatever, there's just no way  
9 we, as a responsible Board, should abdicate our  
10 jurisdiction of this area. Otherwise we might as well  
11 fold the Board up.

12           MR. MILLER: You might look in the  
13 dictionary for the definition of inert. I think you'll  
14 find it as "sluggish."

15           BOARD MEMBER ROBERTI: Uh-huh.

16           (Laughter)

17           CHAIRMAN EATON: Mr. Jones.

18           BOARD MEMBER JONES: Mr. Chairman, in  
19 response to Senator Roberti, I agree with what he said. I  
20 would ask if he would also look at -- because I think  
21 you're right. Our definition of Inert A is pretty

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22 innocuous. It's not going to be a problem for the most

23 part.

24 BOARD MEMBER ROBERTI: For the most part.

25 BOARD MEMBER JONES: Inert A, but if it was

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1 in some form of a notification tier -- because we're  
2 relying on the delivery of material to be consistent with  
3 what we assume to fill that definition. If there is no --  
4 maybe it doesn't need fees, but if there isn't some form  
5 of oversight -- my favorite term, "trust but verify,"  
6 whether it's in a local agency or whatever, just to make  
7 sure that material is going in. Because if it starts  
8 accepting other material that is outside of Inert A, and  
9 we've said we don't have any oversight there, then I think  
10 we don't do ourselves justice.

11 I think if we see that kind of material  
12 coming in a site that maybe wasn't a notification tier and  
13 it starts coming in, then it kicks it into a registration  
14 or a full permit. Because clearly, then, the burden is on  
15 the operator to make sure that the material that's coming  
16 in is consistent with what they have purported that would  
17 be coming in.

18 So something like that, I think it takes  
19 care of them and I think it takes care of our authority.

20 MR. MILLER: Is there a chance you  
21 gentleman and ladies could come to Copperopolis and see

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22 this site and use it as an example? It is a very clean  
23 run operation. It's not filthy. It's just the  
24 terminologies and the enforcement. As a taxpayer of  
25 Copperopolis, I shouldn't be forced to buy expensive

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1 equipment to go up there and prevent fires.

2 CHAIRMAN EATON: I think, Mr. Miller, we  
3 will go. I have at least three more speakers that we need  
4 to go over.

5 What I would like to propose is wait for  
6 the three speakers and hear the three speakers if we want  
7 to have a dialogue, or at least put off any discussion  
8 subject to action to hear Item 5. But before we do that,  
9 we could break for lunch and come back. I think it's  
10 fair, if there's three individuals that would like to be  
11 heard -- Mr. Jeffrey Harvey from the City of Irwindale.

12 Mr. Harvey, welcome.

13 MR. HARVEY: Thank you, Mr. Eaton.  
14 Mr. Eaton, Members of the Board, I am Jeff Harvey, the  
15 Group Manager for Graystone Environmental Consultants. I  
16 am representing the City of Irwindale here today.

17 I've also delivered to the secretary a  
18 letter from the City's attorneys for the record in this  
19 matter. We are here addressing both Agenda Items 4 and 5.

20 We have worked -- Graystone has worked with  
21 the City for the last two years to develop its mining

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22 reclamation and impact study, a copy of which is on file

23 with the Board. It was completed in March of '99. It

24 addresses the mining pits in the City of Irwindale, a

25 broad range of issues, and including backfill and

1 long-term economic development goals of backfill and  
2 reclamation of those mining sites.

3           Just to give you a very brief background,  
4 the City of Irwindale has a total of 14 mining pits  
5 ranging from 80 to 480 acres in surface area and about  
6 150, some deeper than 150 feet. So very substantially  
7 sized pits. They cover 50 percent of the City's land  
8 area, over 2,000 acres of land. The City is also located  
9 in the upper San Gabriel River basin, which as you know is  
10 a superfund site. The City is very aware of the issues of  
11 managing what goes back into those pits as reclamation of  
12 those pits for long-term land development.

13           Having said that, inert landfill is  
14 critical to successful back-filling and reclamation of  
15 those sites, and the City, as in your staff report, did  
16 sponsor several -- or two pieces of legislation, SB 244  
17 and AB 219, that were in part an attempt to establish a  
18 working definition of what was inert material acceptable  
19 for reclamation in those mining pits and to develop some  
20 verification method that would encourage clean fill mine  
21 reclamation.

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22           Relative to the Board's proposed action  
23 here today, the City believes this is much more than a  
24 simple clarification as the staff report suggested. It is  
25 a major reversal of policy in the City's eyes that

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1 threatens to complicate the use of inert landfill for mine  
2 reclamation. The waste fees that would be imposed are  
3 intended to cover environmental costs of waste management.  
4 We understand and agree with that. We believe that  
5 properly defined and properly screened, those inert  
6 materials should not pose significant hazards and should  
7 not be subject to the Board's jurisdiction. And that in  
8 addition, mine reclamation using that inert fill material  
9 does provide tremendous environmental benefits which  
10 should qualify as beneficial reuse, counter to the staff's  
11 position.

12           We do have ground water exposed in many of  
13 the pits in Irwindale. Backfill with inert material  
14 allows to us reduce that ground water exposure, which we  
15 think is a big environmental benefit, particularly in this  
16 designated superfund region, and also allows us to ensure  
17 slope stability, remedial slope stability of the pits, and  
18 develop new and economically productive land uses as well.

19           Regionally, the diversion of inert  
20 materials to reclamation sites extend the life of existing  
21 landfills, as others have testified earlier, obviously

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22 deferring demands for new landfills.

23           So in conclusion, our request for action --

24 the City doesn't see an unavoidable conflict with the

25 Board and your concerns and goals relative to waste



1 management. We would request to defer your action on both  
2 Items 4 and 5, and particularly relative to mining, and  
3 provide us an opportunity to work with the Board staff,  
4 number one, to develop a detailed and acceptable  
5 definition of what is inert material that could be used in  
6 mine reclamation without requiring the Board's regulation;  
7 and then as a second follow-up, we think an equally  
8 important criteria from the City's perspective, any of the  
9 agencies' perspective, is to develop some rigorous  
10 screening protocol for the inert landfills to ensure we  
11 don't have disposal of other than those classified  
12 materials.

13           We believe that policies that promote  
14 recycling inert material disposal for mine reclamation can  
15 have very significant benefits, environmental benefits,  
16 and extending life of existing landfills. And we would  
17 request the Board's cooperation in working towards those  
18 mutual goals.

19           Thank you very much, and if you have any  
20 questions, I'll be happy to answer.

21           CHAIRMAN EATON: Any questions of

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22 Mr. Harvey?

23 BOARD MEMBER JONES: My main concern is the

24 continual reference to beneficial reuse because I'm afraid

25 they want to get AB 939 credit for filling that hole with

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1 dirt that was never counted as part of the waste to begin  
2 with. When it weighs a ton a yard, there's an awful lot  
3 of curbside programs that would be hard pressed to ever  
4 operate to match that and could have a pretty serious  
5 impact on the infrastructure that's built to do recycling.

6 And I keep getting the sense that's part of  
7 this issue, is getting AB 939 diversion credit and that's  
8 bothersome to me.

9 MR. HARVEY: Mr. Jones, it's not my  
10 understanding that's the City's goal or purpose here in  
11 any way. The use of the term "beneficial reuse" is only  
12 in regard to your original 97-509 where, because mine  
13 reclamation was classed as a beneficial reuse, it wasn't  
14 subject to the Board's jurisdiction. And that's the sense  
15 that I use that term here today.

16 CHAIRMAN EATON: Mr. Ken Hirsh.

17 MR. HARVEY: Thank you.

18 CHAIRMAN EATON: Thank you.

19 BOARD MEMBER JONES: Okay.

20 CHAIRMAN EATON: Mr. Ken Hirsh.

21 Mr. Hirsh, welcome.

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- 22           MR. HIRSH: Mr. Chairman, can I hold my  
23 major comments until after Item 5 or at the end of Item 5?  
24 I would just make one comment.  
25           CHAIRMAN EATON: I think that would be --

1           MR. HIRSH: I counted that diversion -- I  
2 represent H.M. Holloway, the Tipton Mine, the near surface  
3 gypsum mine at (inaudible) down the west side of the San  
4 Joaquine Valley.

5           Your problem here with definitions, you're  
6 never going to get to first base with meaningful  
7 regulations without proper definitions that are acceptable  
8 by all entities, all agencies. You find tires as not  
9 being inert. Regional Water Quality finds tires as being  
10 inert. You find -- Toxics finds treated auto shredders as  
11 special waste, which means if it's not treated, it's  
12 hazardous. You find it in use for daily cover as a  
13 corrosive, Class 3 dump.

14          Until these things are worked out and until  
15 you get together and dovetail on these things, you're  
16 going to be in rhetoric here for a long time. I think  
17 right now Toxics, as you know, has been going through this  
18 RSU program classification -- reclassification of  
19 hazardous material which has been very controversial and  
20 very sensitive. They made a real effort to where all  
21 organizations and agencies have overlapped in control, and

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22 that's really the problem here in California. They made  
23 an attempt in their diagramming and their structuring to  
24 dovetail with all the organizations and find common  
25 language. That's what you need to do.

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1 Thank you.

2 CHAIRMAN EATON: Thank you. We'll hear

3 again from you on Item Number 5. Our last speaker slip

4 before we break is Evan Edgar, CRRC.

5 Mr. Edgar, welcome.

6 MR. EDGAR: Good afternoon, Chairman, Board

7 Members, and welcome Board Member Patterson. My name is

8 Evan Edgar and I would like to submit in today my

9 presentation and testimony. A copy has been passed out.

10 I would like to concur with staff

11 recommendation Option Number 1. Following my handout

12 here, I believe that this discussion has been under way

13 for over 18 months. (Inaudible) three or four different

14 times. The SMARA issue has been discussed and does not

15 need to be tabled today because it's been tabled since

16 January of '99.

17 I don't believe there's any new issues

18 today really other than a better definition for Type A and

19 Type B inerts. I don't think it is prejudging today. I

20 believe the ongoing dialogue has been enough to get

21 consensus over the last year and a half. I believe along

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22 the way we have benchmarked different rate regulations

23 that have brought that consensus to the floor. I would

24 like to talk more about this a little more later.

25 Getting into the resolution today, I concur



1 with the language set forth by counsel. If you look at my  
2 letter to record dated February 24th, 1998, and a copy is  
3 attached in the handout, I basically use that exact same  
4 language that legal counsel is recommending today where,  
5 at the time, there was a controversy about Policy Number 7  
6 and why that segment of the industry did not concur with  
7 that, and that how this type of beneficial reuse does not  
8 constitute recycling. And that type of language, I  
9 believe that regulations in a resolution, we would concur  
10 with.

11 I believe there's a lot of policy  
12 incentives to divert inerts from landfills. I think  
13 there's a myth today that all these inerts are going to  
14 end up in Class 3 landfills for disposal. That is not  
15 happening. I represent inert processors from Fresno to  
16 San Jose in the state of California. Our growing industry  
17 is making CalTrans baserock for green construction. It's  
18 real, we're doing it. We're not using it just for  
19 beneficial reuse of landfills or other types of inert  
20 disposal landfills. I believe there's a strong market and  
21 booming economy to make real materials for construction,

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22 and that's where the inert is going, that's where the C&D

23 is going. We don't need to have them going to disposal.

24 I believe there's a lot of policy

25 incentives to the landfills for true recycling and we need

1 to make sure that there's regulatory equity out there. I  
2 believe over the last 18 months and different versions of  
3 the regulations we have achieved a level of equity. In  
4 fact, if you look at the April 16th, 1990 diversion where  
5 it went out for 45-day public comment period, the mine  
6 reclamation regulation activities were not patently  
7 excluded.

8 In fact, today we talk about what is an  
9 engineered inert fill for Type A. Those type of  
10 facilities would have been put in notification tier. You  
11 had a strong definition for inert, you had engineered  
12 inert plans, and if you had that type of tight control,  
13 that would have been notification tier.

14 I think, today, I heard a consensus among  
15 different parties that would be a good idea. We would  
16 support that type of concept. I believe the over-arching  
17 issue here is not just regulatory equity. I believe that  
18 sets a framework for other types of policy that will need  
19 to be discussed later.

20 Other types of policies would be two very  
21 compelling policies. One is fee equity and what would

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22 happen to the payment to the Integrated Waste Management

23 account, and the other is AB 939 diversion credit. CRRC

24 has, for the last year and a half, been discussing

25 regulatory equity and trying to achieve that, and I think

1 we're getting pretty close.

2 But in the sense of fee equity, there was a  
3 workshop on August 4th, 1998 where legal counsel qualified  
4 the statutory history of these fees, and today it was  
5 discussed again what is disposal and what is a solid waste  
6 landfill. But at that time I believe that most parties  
7 believed that C&D and inert disposal would be placed in a  
8 tier that would require them to pay a fee. That would be  
9 a future policy based on the outcome of the regulations.  
10 That's one thing I want to bring forth that is rather  
11 clear, and I believe that we had strong sentiment about  
12 that on August 4th.

13 Another issue we had was back on January  
14 27th and 28th, 1999, Agenda Item 9, where we talked about  
15 AB 939 diversion credit. I think it was rather clear that  
16 at the time Waste Board Members said that mine reclamation  
17 activities and inert fill do not constitute landfill  
18 diversion at the time. I do include the transcripts of  
19 the meeting, and I believe that policy statement has been  
20 set forth a couple times. And once again, we're waiting  
21 for the regulatory tiers to be adopted in order to fall on

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22 that policy item.

23 As a whole, CRRC supports Resolution

24 1999-392. There's been a lot of discussion on this. I

25 believe we've been at the table once, twice, and I think

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1 that we had adequate discussion in three or four different  
2 working groups in order to get some tighter definitions.  
3 I believe the regulation has come a long way, and I'll  
4 comment later on those during Item Number 5.

5 CHAIRMAN EATON: Any questions of  
6 Mr. Edgar? Any further discussion? Okay. We'll -- that  
7 concludes at least the public testimony on Item Number 4.  
8 We'll come back at 2:00 and take up the remainder of Issue  
9 4, or at least once -- delay it once we've heard Agenda  
10 Item Number 5.

11 So we'll stand in recess until 2:00 p.m.  
12 for lunch. Thank you.

13 (Lunch recess taken)

14 CHAIRMAN EATON: Welcome back, everyone.  
15 Hopefully you had an enjoyable lunch. Starting with my  
16 left, Mr. Pennington, do you have any ex partes?

17 BOARD MEMBER PENNINGTON: Yes,  
18 Mr. Chairman. I just have one. Gary Liss, Dale Stansbury  
19 and Mike Silva came up and introduced themselves to me.

20 CHAIRMAN EATON: Mr. Jones.

21 BOARD MEMBER JONES: I received the same

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22 introductions from Mr. Liss, Dr. Stansbury, and Michael  
23 Silva, and they're here on Item 11; and then had a brief  
24 discussion with Ken Stoddard, Chuck White and Gene Urban  
25 on our favorite subject, inerts.



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1 CHAIRMAN EATON: Senator Roberti. I'm  
2 sorry.

3 BOARD MEMBER ROBERTI: Yes. I met briefly  
4 with Mr. Cosby of Waste Management, New Way. It was just  
5 a brief hello, but they have an item before us.

6 MS. MOULTON-PATTERSON: Mr. Mike Mohajer of  
7 the County of Los Angeles introduced himself to me.

8 CHAIRMAN EATON: And I have Mr. Stansbury  
9 and Mr. Liss, just as a brief meet-and-greet as well.

10 BOARD MEMBER ROBERTI: While we're at it,  
11 Mr. Mike Mohajer and myself briefly regarding the Los  
12 Angeles office.

13 CHAIRMAN EATON: All right. I have one  
14 late speaker slip from Mr. Ken Ehrlich. Is he still in  
15 and wish to speak to Item 4?

16 MR. EHRLICH: Yes, Mr. Chairman. Thank  
17 you, Mr. Chairman, Board Members. My name is Ken Ehrlich  
18 of Jeffer, Mangles, Butler and Marlborough. I'm here on  
19 behalf of Peck Road Sand and Gravel, one of the three  
20 inert operators who received bills from the BOE regarding  
21 waste fees.

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22           In addition to supporting the previous  
23 comments from various industry representatives, especially  
24 Ms. Shenks and others, we recommend that the Board put  
25 over the resolution as Item Number 4 for further

1 consideration in tandem with Item Number 5. And in  
2 concert with that, I would like to explain some of the  
3 points very briefly which have not been specifically  
4 talked about this morning.

5           Specifically, the resolution itself would  
6 support, in its present form, the retroactive application  
7 of the fees. And what I think has been lost on the Board  
8 is that this retroactive application would be on the backs  
9 of only three of the operators who operate within this  
10 entire industry. You've heard testimony this morning that  
11 there are up to 1100 operators within this industry, only  
12 three of which have had the unfortunate circumstance of  
13 being properly permitted at this point, or permitted in  
14 any way, shape, or form, and have subjected themselves to  
15 the fee. So in its present form, the resolution could  
16 support the retroactive application of the fees which we  
17 think is patently unfair, especially against small  
18 business operators like my client.

19           Second of all, there is a true distinction  
20 between inert operations, as Senator Roberti pointed out  
21 this morning, and what's going on with these -- with solid

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22 waste disposal. The forms that Peck Road has filled out  
23 religiously since it's been permitted since 1995, the  
24 forms themselves talk of solid waste disposal. So I think  
25 it's ingenuine to use the fact that what the forms seem to

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1 say that Peck Road is solid waste disposal. If it's an  
2 issue of definition, which we agree with the Senator that  
3 it is, then that issue should be specified, and what is  
4 inert and what is inert inert should be specified as to  
5 the other materials. But simply because a permit form has  
6 been filled out improperly should not be used against an  
7 inert fill operator.

8           Finally, the philosophical question which  
9 was posed was that shouldn't there be a regulatory scheme  
10 if, at the end of the day, there are land use restrictions  
11 placed upon these facilities. Whether it be a landfill or  
12 inert operation, if at the end they have this same type of  
13 use restrictions, they should be permitted in a similar  
14 fashion prior to that end-of-the-day use.

15           Well, I would suggest that there is a  
16 strong distinction there because the materials that the  
17 inert facilities receive require various levels of  
18 regulatory oversight along the way to get to that ultimate  
19 land use. If you take inert materials which do not  
20 present a threat to the public safety or the environment  
21 or present any form of eminent substantial endangerment,

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22 there is a less restrictive level of regulatory oversight  
23 that's required in the closure and post-closure years of  
24 operation than a facility that would be a Class 3  
25 landfill, for example. So it presents less of a

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1 regulatory burden and therefore less cost to regulate the  
2 truly inert facilities. That's what I would suggest as an  
3 answer to the suggestion earlier this morning.

4 I'd be happy to answer any questions, and I  
5 would like to also speak to Item 5, but I believe those  
6 issues were important to go before the Board.

7 CHAIRMAN EATON: Any questions of  
8 Mr. Ehrlich?

9 MR. EHRLICH: Thank you.

10 CHAIRMAN EATON: I would like someone,  
11 either Ms. Shenks or Mr. Ehrlich or Mr. White or anyone  
12 else who had spoken previously, to -- and I would like  
13 Mr. Elliott Block, if possible, with the concurrence of my  
14 fellow Board Members, try and frame the issue. I  
15 struggled over lunch trying to figure out -- in essence,  
16 you know, the issue change and modification has been  
17 advanced because that's what's being done in Resolution  
18 1999-392 versus the decision, that it's just sort of a  
19 clarification. And I was just struggling with it really.  
20 And seriously, if we could try and see where that is and  
21 frame that issue, and I'll see if the Board Members want

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22 to kind of vote on it or postpone it as has been requested

23 because -- was I clear on what I'm asking? If not, I

24 can --

25 MS. SHENKS: I believe so. I was just

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1 looking for --

2 CHAIRMAN EATON: Take your time. I caught  
3 you off guard, so to speak.

4 MR. MILLER: I have one question. The  
5 facility at Copperopolis is called the Monofill. I don't  
6 heard that word anyplace. Is that going to be a separate  
7 subject?

8 CHAIRMAN EATON: That was Mr. Miller from  
9 Copperopolis in regard to the Monofill. Currently right  
10 now, we're dealing with construction and demolition debris  
11 as it relates to inert material. I think it's a general  
12 consensus that -- at least amongst the Board Members, that  
13 tires are part of an inert material, although reasonable  
14 minds can differ at least with regard to our resolutions  
15 just to those materials. So we're not dealing with tires  
16 at the present time.

17 Ms. Shenks.

18 MS. SHENKS: Yes. I think the problem with  
19 the resolution as it's presently revised is that with  
20 regard to mine reclamation, it imposes two requirements in  
21 order to be deemed to be a productive reuse of materials

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22 and therefore outside the jurisdiction of the Board. It  
23 requires that it not be within the definition of solid  
24 waste disposal or handling, and that it qualify as a form  
25 of recycling. And the problem is because the definition

1 of solid waste disposal is so broad, final deposition of  
2 solid waste to land, and includes construction and  
3 demolition debris in the definition of solid waste, then  
4 it means that you essentially decided that these  
5 facilities are not entitled to be excluded as you had  
6 originally proposed or determined.

7           The second problem is that based upon the  
8 staff report of earlier, when you drafted the resolution,  
9 there was not only the definition of recycling as a  
10 possible basis for exemption, but also previous  
11 determinations of the Board. And you'll find that I  
12 believe on page 4-44 of the November 19, 1997 staff  
13 report.

14           I think that if I could just propose some  
15 language that we would find acceptable -- our view is you  
16 ought to just table this until you hear Item 5 and then  
17 hopefully come to a conclusion at the end of that, that  
18 this whole thing needs to go back to the drawing board at  
19 least with regard to mine reclamation. But if you're not  
20 prepared to do that, then I think that at least what ought  
21 to be done to this paragraph is to say "mine reclamation

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22 with construction and demolition inert debris would not be

23 within the Board's jurisdiction if they constitute

24 productive use of this material that," and then strike "do

25 not fit within the definition of solid waste disposal and

1 handling," but in fact delete all of that and say "that  
2 qualify as a form of recycling as defined in Public  
3 Resources Code 40180, or that as," in fact, you could say,  
4 "as that term has been interpreted in the past by the  
5 Board," or just add "as that term has been interpreted by  
6 the Board," because that has always been the basis upon  
7 which you've determined that mine reclamation is outside  
8 your jurisdiction.

9           The offensive language is not -- does not  
10 fit within the definition of solid waste disposal.

11           CHAIRMAN EATON: Is it a fair statement  
12 that you believe that mine reclamation are involved in the  
13 activity of recycling?

14           MS. SHENKS: That has been your  
15 interpretation in the past, that the use of this material  
16 to essentially create new land is a form of recycling.

17           BOARD MEMBER JONES: That's been our view?

18           MS. SHENKS: That was my understanding of  
19 Resolution 97-509. And it was not only that, but that was  
20 the basis for your earlier resolution.

21           BOARD MEMBER JONES: Mr. Chairman.

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22 CHAIRMAN EATON: I'm sorry. That's why I

23 was trying to frame the issues.

24 Mr. Jones.

25 BOARD MEMBER JONES: If you look at the

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1 transcript from that date --

2 MS. SHENKS: I have it. Yes.

3 BOARD MEMBER JONES: It is brought up by  
4 the Board Members that sat there that in no way would this  
5 constitute recycling. I brought it up.

6 MS. SHENKS: That's not my recollection of  
7 the transcript. My recollection is that, in fact, you  
8 have always taken the position that mine reclamation was  
9 outside your jurisdiction. I've read a lot of the  
10 transcripts, and I've also read the briefs that the  
11 Attorney General filed in the NRAC litigation on points  
12 that were made on behalf of the Board in that litigation.

13 But I think the point is here that there's  
14 obviously a lot of controversy here, and while I thought I  
15 was hearing some consensus being reached about one,  
16 defining what truly inert materials are; two, identifying,  
17 finding some way that is not overly burdensome to identify  
18 the facilities which use those materials for mine  
19 reclamation; and three, finding a way to verify that those  
20 facilities are not accepting materials other than truly  
21 inert material -- would essentially satisfy everyone's

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22 concerns.

23           So I think that's where we ought to

24 proceed, not try to play around with this resolution. It

25 was done in 1997 in order to stand on its own. And what

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1 we ought to be focussing on is a way to move forward with  
2 your construction-demolition debris regulations  
3 essentially is an appropriate level of concern or  
4 regulation by this Board with regard to inert materials.

5 CHAIRMAN EATON: Thank you for framing it.  
6 Mr. Block, or if anyone else that may have spoken this  
7 morning that would like to either embellish or add to what  
8 Ms. Shenks has done in terms of framing the issue.

9 Before you go up, Mr. Edgar, I want to hear  
10 from Mr. Block so we can get clarity on the issue as  
11 framed.

12 MR. BLOCK: Just two quick points. First  
13 one, that was actually very helpful clarification in terms  
14 of the language in the resolution. I think I understand  
15 this issue about two requirements.

16 In the way the Board has always analyzed  
17 this issue whether something fits within jurisdiction or  
18 not, the two definitions in Statute 14, solid waste  
19 disposal, and the other for recycling, has always been  
20 viewed as two ends of the continuum, if you will. So in  
21 terms of the way this language was written, it was not

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22 written in the sense that both requirements have to be  
23 met. They're basically two ends of the continuum. If you  
24 fit recycling, you're not fitting disposal. And the  
25 language wasn't changed in the proposed resolution today

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1 because I wanted to match the language we used two years  
2 ago. It's very important that I make clear I wasn't  
3 trying to play with that language.

4           The particular suggestion that was made  
5 about changing that language I don't believe would change  
6 the import of that sentence. In other words, if it simply  
7 dropped the part about solid waste disposal because if it  
8 doesn't fit recycling and it's being put on the ground,  
9 it's going to fit -- it's going to be solid waste disposal  
10 anyway. So I don't think that changes the substance. I  
11 certainly wasn't bringing that forward because I was  
12 trying to bring this language forward verbatim.

13           The second comment I wanted to make is I  
14 think that the comments that you heard were exactly the  
15 reason why we thought we needed to bring this forward  
16 because apparently -- you heard the comments from  
17 Ms. Shenks, that she believes the Board did, in fact, make  
18 this decision two years ago, that we would not regulate  
19 this activity. And I think, as is indicated in the agenda  
20 item and the transcripts, it's pretty clear that was not  
21 the case.

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22           So unless you have any questions that you

23 wanted to respond to those two issues.

24           CHAIRMAN EATON: Thank you.

25           Any questions of Mr. Block?

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1 BOARD MEMBER JONES: Mr. Chairman.

2 CHAIRMAN EATON: Mr. Jones.

3 BOARD MEMBER JONES: In trying to stay

4 consistent with what the January or whatever it was.

5 CHAIRMAN EATON: November.

6 BOARD MEMBER JONES: 97-509. I didn't

7 think I have a problem with mine reclamation, with

8 construction being inert but not within the Board if it

9 was protective use and material. But if we're -- there is

10 so much ambiguity about this statement as far as does it

11 count or doesn't it count, that in my mind we ought to

12 strike the words "construction and demolition" because

13 clearly that material is not the material that we were

14 talking about. It has a problem -- C&D sites have

15 historically been permitted, I don't care if they're in a

16 mine site or what, because they leech and they leech

17 materials into the water system.

18 So if we're going to go down that road and

19 look at redefining, then I think we have to at least

20 understand that irregardless of who dug the hole, C&D

21 material leaches differently than what we have been using

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22 as a term Inert A, which is the dirt, the rock, the brick,  
23 and the cured asphalt. And that was what we were talking  
24 about that day, but if everybody's memories are that  
25 short, then I would say strike it.

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1           CHAIRMAN EATON: All right, Members. We've  
2 spent a considerable amount of time. A couple of things  
3 before us. We can seek the request by those who presented  
4 their testimony, that we postpone at least the vote on  
5 this resolution until we've heard Item 5. I think that's  
6 a correct way to frame it. Or we can move and actually  
7 take up the resolution right now.

8           Is there a pleasure to either of those?

9           BOARD MEMBER PENNINGTON: Mr. Chairman.

10          CHAIRMAN EATON: Mr. Pennington.

11          BOARD MEMBER PENNINGTON: I would be in  
12 favor of dealing with Number 5 and then coming back to  
13 this.

14          CHAIRMAN EATON: Any objection to moving to  
15 5 and then kind of see if that -- okay.

16          We'll postpone the final deliberation and  
17 vote on Item Number 4 and move to Item Number 5.

18          Ms. Nauman, are you making a presentation  
19 on this?

20          MS. NAUMAN: Part of it.

21          CHAIRMAN EATON: Part of it? Okay. Great.

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22 Thank you, Mr. Block. Don't go too far, I'm sure.

23 In addition, I should point out that if

24 there are any individuals who did not speak on Item 4 but

25 desire to speak on Item 5, the slips are in the back if



1 you can fill them out. I think we have a few more. Thank  
2 you very much.

3 Ms. Nauman.

4 MS. NAUMAN: Mr. Chairman and Members,  
5 Julie Nauman.

6 This item is consideration of staff  
7 recommendation for revisions to the proposed  
8 construction-demolition inert debris regulations and  
9 consideration of approval to notice a 15-day comment  
10 period and discussion of mine reclamation sites.

11 As has been alluded to several times this  
12 morning, session of this regulation package has been in  
13 the works since 1997. We came back to the Board in  
14 January of this year to review with you the results of the  
15 45-day comment period and to request at that time the  
16 commencement of the final 15-day comment period.

17 At that time, you directed us to  
18 provide some additional information on mine reclamation  
19 sites, and I refer to the paragraph on page 5-3 of the  
20 item where the components of that information are  
21 detailed. You have in your agenda item a report prepared

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22 by staff that addresses those specific requests for

23 reclamation with respect to mine reclamation sites.

24 Yesterday there were some issues that were

25 raised, and we took the time to correct a couple of items

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1 in that report, and you do have now a revised report  
2 reflecting those corrections.

3 In addition, in your packet, you have a  
4 chart that we have since also refined and added some color  
5 that looks like this. I call that to your attention.

6 When I finish these opening remarks, I'm going to ask  
7 Marcia Kiese to work through this chart with you in an  
8 effort to explain how we have proposed to structure the  
9 regulations for you to specifically address the  
10 distinction between inerts and construction and demolition  
11 materials.

12 CHAIRMAN EATON: And that is a new chart  
13 that I have asked Ms. Bertram -- for those of you maybe in  
14 the audience who have an original packet, my understanding  
15 is you've added some things.

16 MS. NAUMAN: The major things that we --

17 CHAIRMAN EATON: We've xeroxed them and  
18 they're in the back. So while you're making a  
19 presentation, for those of you in the audience who like to  
20 get those copies, Ms. Bertram has already xeroxed those  
21 so we're all on the same page of the same attachment.

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22           Thank you. I'm sorry.

23           MS. NAUMAN: In addition, I believe you all

24 have received a copy of the memorandum from Chief Deputy

25 Director Steve Arthur of the Department of Conservation

1 Office of the Director, their comments. And during this  
2 last presentation, we'll also be addressing the issue of  
3 implementation with respect to AB 59 requirements, and I  
4 think you have a handout to that effect as well. So those  
5 are kind of the pieces of the item.

6 Just also a reminder that since that  
7 package has been underway for sometime, we have the  
8 practical reality that unless the package is submitted to  
9 the Office of Administrative Law by October 16, that we  
10 will not be able to continue the package, and in fact, it  
11 will die of a natural death by operational law and you  
12 would have to commence the rulemaking process over again  
13 if you decided to further proceed.

14 So if you take the action to approve the  
15 15-day comment period today, that would enable us to come  
16 back to the September 21st meeting for final action on the  
17 package, which would then allow sufficient time to  
18 complete the CEQA review process -- actually you would  
19 adopt the negative declaration at that September meeting  
20 and it would complete the rulemaking package and we would  
21 submit it to the Office of Administrative Law prior to the

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22 October 16th deadline.

23 So with that background, I would like to

24 ask Marcia if she would begin the staff presentation.

25 CHAIRMAN EATON: Thank you.

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1 MS. KIESSE: My name is Marcia Kiese,

2 M-a-r-c-i-a, K-i-e-s-s-e.

3 Good afternoon, Chairman Eaton and Board

4 Members. What I'm going to do today is basically three

5 things. One is to start with a little background on what

6 we've done since the Board meeting in January; and then

7 I'm going to go over the chart that you have that shows

8 tier placement; and I also brought some photographs that I

9 can share with you, photographs of sites that I think will

10 be covered by these regulations.

11 At the Board meeting in January, you asked

12 us to come back with information on mine reclamation

13 sites, and we've included a copy of the staff report in

14 the agenda item. But I can tell you basically what we

15 found was that rather than there being an overlap of

16 regulatory oversight, there's actually an area that we

17 felt was of concern to this Board in particular, and that

18 was situations where the mine reclamation operation

19 actually included backfilling or importation, I should

20 say, of waste to backfill a pit.

21 Now, bear in mind there are many kinds of

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22 mine reclamation projects and not all of them result in  
23 large pits. So out of the -- I think it's 1500 mine sites  
24 in the state, some smaller percentage of that actually  
25 involves or could potentially involve backfilling. And

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1 then of that number of sites, some of them may not choose  
2 to reclaim their site with backfilling. So the actual  
3 number of sites that potentially could be bringing in  
4 waste material to reclaim their site is actually a much  
5 smaller number than the 1500, but I don't know the exact  
6 quantity at this time.

7           One of our primary problems was that in  
8 going over the files for these sites, we were over at the  
9 Office of Mine Reclamation, and their primary concern of  
10 course is what comes out of that site and not necessarily  
11 what comes back in. And their staff told us that when  
12 they see a mine reclamation plan that involves importation  
13 of waste, they tell the operator that they should notify  
14 this Board -- I guess the LEA -- so that if they do need a  
15 solid waste facility permit, that can be taken care of,  
16 but there's no -- they don't tell us that they told  
17 somebody that, and there's no going back to see whether or  
18 not they did or not.

19           Now I'm going to go through this chart. On  
20 the top, there are descriptions of what the different tier  
21 placements actually mean in a practical sense. The first

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22 one is for notification; the second one for registration;  
23 and then for full permits. And then on the very bottom,  
24 there's text down there that describes Type A and Type B  
25 inerts and C&D.

1           The middle part of this, the actual body of  
2 this, it's dominated by Inert Type A, Inert Type B, and  
3 C&D. And I'll start right now with the little more  
4 complicated one which is the C&D.

5           If a -- let me read you the definition of  
6 C&D so you know what we're talking about. C&D means  
7 building materials and solid waste resulting from  
8 construction, remodeling, repair, cleanup or demolition  
9 operations that are not hazardous as defined in Title 22,  
10 Section 66261.3 et seq. They include inert debris or  
11 inert waste as defined in Title 14, Article 5.9. 5.9 is  
12 the proposed C&D regs, Section 17381, Subsection G.

13           It also includes lumber, gypsum wallboard,  
14 cardboard and other associated packaging, roofing  
15 material, carpeting, plastic pipe and steel. It does not  
16 include C&D commingled with 10 percent or greater by  
17 volume of other types of nonhazardous solid waste.  
18 However, C&D may be commingled with rock, soil, tree  
19 stumps and other vegetative matter resulting from land  
20 clearing and landscaping for construction or land  
21 development projects.

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22           So if we start with the large oval there,  
23 with C&D, the way that our regulations are set up, either  
24 they go to a processing operation or facility or they go  
25 to disposal.

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1           Let's look at the processing first.

2   Depending on how much tonnage they take in per day, if

3   it's under 100 tons per day, that would fall into

4   notification tier. If it's over 100 tons, or 100 tons or

5   over per day, then it falls into registration tier. All

6   disposal of C&D would require a full permit.

7           Now -- Type B, we found it necessary to --

8   inert waste we found necessary to divide into two types

9   because current regulation from the Water Board includes a

10   broad number of wastes, and not all of them are what we in

11   this Board would consider inert. So Type A is what I call

12   the more traditional inerts, or as the Senator refers to

13   as inert inerts. Type A includes concrete, including

14   fiberglass or steel rebar embedded in the concrete, fully

15   cured asphalt, brick, slag, ceramics, plaster, clay and

16   clay products, and wood ash from biomass conversion

17   operations. It must be nonhazardous as defined in Title

18   22, Section 66261.3 et seq, but may be commingled with

19   rock and soil.

20           I might add also, since we produced this

21   definition, it was brought to our attention that sometimes

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22 wood ash from biomass conversion operations may actually  
23 be a designated waste. So we're proposing that we would  
24 say not only must it be not hazardous, but it also must  
25 not be a designated waste.

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1 CHAIRMAN EATON: Senator Roberti.

2 BOARD MEMBER ROBERTI: Explain to me again

3 designated waste. Now, that is designated in another

4 section of the Code?

5 MS. KIESSE: Designated waste comes from

6 the Water Board's regulations, and that means a waste

7 that's not hazardous but under ambient conditions of

8 disposal, it could cause water quality problems. In the

9 case of biomass, the ash from biomass conversion,

10 sometimes there is -- there are metals in there that are

11 of concern to the Water Board and that they would be

12 classified as a designated waste.

13 BOARD MEMBER ROBERTI: Are we saying that

14 kind of ash would not be -- are you suggesting that type

15 of ash would not be Type A?

16 MS. KIESSE: A designated ash.

17 BOARD MEMBER ROBERTI: Designated.

18 MS. KIESSE: Would not be.

19 BOARD MEMBER ROBERTI: It would be Type B?

20 MS. KIESSE: Right.

21 BOARD MEMBER ROBERTI: Got it.

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22 MS. KIESSE: If it's not designated, then

23 it would be Type A.

24 Looking at the light blue or far left side,

25 we have the oval that describes Inert Type A. And once

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1 again, it can either go through the processing route or  
2 disposal. If it goes through processing -- that's a very  
3 small operation of 100 tons or less than 100 tons per  
4 day -- that falls into a notification tier. If it's 100  
5 tons or over per day, then it falls into the registration  
6 tier. Disposal of Inert Type A also goes into the  
7 registration tier. In the center is Inert Type B.

8 BOARD MEMBER PENNINGTON: Mr. Chairman.

9 CHAIRMAN EATON: Mr. Pennington.

10 BOARD MEMBER PENNINGTON: Can I just ask,  
11 why 100 tons per day?

12 MS. KIESSE: It was essentially to give a  
13 break to very small operations, particularly in rural  
14 counties. It was something that came up in our work  
15 group.

16 BOARD MEMBER PENNINGTON: But I mean, what  
17 is the basis other than just picking it out of the air?

18 MS. KIESSE: It was -- I don't want to say  
19 picked out of the air, but it was a consensus, I would  
20 say, amongst most of the people in the group that a small  
21 operation like that should have a lesser regulatory

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22 oversight. There was nothing magical about that number.

23 I guess we can always take it out or change it or

24 whatever.

25 BOARD MEMBER PENNINGTON: Okay.

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1 BOARD MEMBER JONES: Mr. Chairman.

2 CHAIRMAN EATON: Mr. Jones.

3 BOARD MEMBER JONES: Follow-up on  
4 Mr. Pennington's question. Under our transportation regs,  
5 isn't it 60 yards?

6 MS. KIESSE: For the really small ones, I  
7 think it's 15 cubic yards.

8 BOARD MEMBER JONES: Does it go to  
9 registration at 60?

10 MS. KIESSE: I think 60, yes.

11 BOARD MEMBER JONES: At registration.

12 MS. KIESSE: Yes.

13 BOARD MEMBER JONES: So if we were  
14 consistent with our transfer station regs, we would make  
15 the break at 60.

16 MS. KIESSE: Cubic yards.

17 BOARD MEMBER JONES: Right. And that would  
18 be 60 tons.

19 MS. KIESSE: For concrete, yeah.

20 BOARD MEMBER JONES: But it would be --  
21 just on a follow-up on Mr. Pennington's question, it would

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22 be consistent with the tran station regs.

23 MS. KIESSE: Yes. To be consistent, you

24 would make it 60.

25 BOARD MEMBER JONES: I'm just throwing it

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1 out there. I'm not saying I recommend it, I'm just saying  
2 to be consistent and maybe it would be less confusing and  
3 be consistent with the transportation regs.

4 BOARD MEMBER PENNINGTON: Maybe we would  
5 like to make it double.

6 MS. KIESSE: In the middle is Inert Type B,  
7 and I'll read the definition of that. Inert Type B is  
8 other wastes determined to be inert by the Regional Water  
9 Quality Control Board but not included in Type A, such as  
10 treated industrial wastes, auto shredder fluff, dewatered  
11 bentonite-based drilling mud, rubber scrap, shredded waste  
12 tires or similar wastes. It may be commingled with rock  
13 and/or soil. I should mention whenever we say "soil" just  
14 by definition that can also include petroleum contaminated  
15 soil.

16 So once again you have either the  
17 processing route or disposal for processing of any amount  
18 of Type B inerts that falls into the registration tier,  
19 and dispose of any type or any quantity of Type B in  
20 the full tier. At the very top -- I should have brought  
21 that up -- is emergency operations. These are declared by

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22 the Governor in the case of an earthquake or flood, and

23 those operations can go under notification for -- I

24 believe it's 120 days.

25 BOARD MEMBER JONES: Mr. Chairman.

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1 CHAIRMAN EATON: Mr. Jones.

2 BOARD MEMBER JONES: Type A, I'm assuming

3 by our definition and on line site, because it's Type B,

4 because of it, we're talking lined site.

5 MS. KIESSE: Well, we don't specify whether

6 or not, if it's a Water Board determination, whether or

7 not it should be lined.

8 BOARD MEMBER JONES: Because some of the

9 materials that you're bringing up here could create a

10 problem.

11 MS. KIESSE: I think --

12 BOARD MEMBER JONES: And if we're going to

13 do that, we should be consistent and line the site.

14 MS. KIESSE: It depends on where it's

15 located. I'm going back to when I worked at the Water

16 Board, some sites have geologically or --

17 BOARD MEMBER JONES: So it could be an

18 engineered alternative.

19 MS. KIESSE: It could be an engineered

20 alternative, but the main thing is that -- as far as I

21 know, anyway -- this Board doesn't require liners or not

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22 require liners.

23 BOARD MEMBER JONES: Because we rely on the

24 Water Board to make that determination.

25 MS. KIESSE: Because we rely on the Water

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1 Board, right.

2 BOARD MEMBER JONES: But our problem with  
3 this, the Inert A and Inert B, is because of the  
4 definition of the Water Board creates a division in how  
5 we're going to classify those wastes. So if we're going  
6 to be consistent to that, then we should be looking at  
7 what the Water Board would deem as necessary for those  
8 wastes, because under Inert B, it can still have up to 10  
9 percent municipal solid waste mixed with it.

10 MS. KIESSE: Right.

11 BOARD MEMBER JONES: So the unit that's  
12 bringing in a thousand yards of concrete could essentially  
13 also bring in 100 tons of municipal solid waste or 10 to  
14 20 truck loads of garbage.

15 MS. KIESSE: That's true.

16 BOARD MEMBER JONES: That's an issue.

17 MS. KIESSE: Generally speaking, C&D --

18 BOARD MEMBER JONES: Daily.

19 CHAIRMAN EATON: And that's daily or  
20 annually or semiannually if they were at the 10 percent?  
21 The trucks he was talking about, that they could bring

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22 in --

23 BOARD MEMBER JONES: My example at a  
24 thousand tons of C&D, of concrete, under the Water Board  
25 regulation, they could bring in 100 tons of garbage. 100

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1 tons of garbage could be 10 garbage trucks or 15 garbage  
2 trucks or 20, depending upon the size and the weight, and  
3 that could be done daily. Because if they took in 1000  
4 yards of material a day, they could also take in that much  
5 garbage under the 10-percent rule.

6 MS. KIESSE: For the purposes of  
7 regulation, we determine it on a monthly basis.

8 BOARD MEMBER JONES: Okay. So if they  
9 brought in 30,000 tons of C&D, they could bring in 3,000  
10 tons of garbage.

11 MS. KIESSE: In one day, yes.

12 BOARD MEMBER JONES: That's a problem.

13 MS. KIESSE: I also wanted to show you some  
14 photographs. Let me get them from the desk.

15 This first site actually started out as a  
16 recycling center.

17 CHAIRMAN EATON: This isn't  
18 what's-his-name's, is it?

19 MS. KIESSE: Larry didn't give me his  
20 pictures.

21 (Laughter)

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22 CHAIRMAN EATON: Okay. For those of you  
23 who have not been around, there's a gentleman who used to  
24 have a picture of them all the time. Thank you very much.

25 MS. KIESSE: This is a 10-acre site in

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1 Tulare County that started out as a recycling center. The  
2 operator took in C&D, and as far as we know, never really  
3 recycled anything and eventually left. And so the County  
4 has a very large cleanup ahead of it.

5 This is another perspective. This shows  
6 that same water tower from the other end of the site.

7 This series of photographs shows actually a  
8 facility that is, right now, operating under a transfer  
9 station permit but considers himself a C&D processing  
10 facility. He has it in a totally enclosed site, or at  
11 least on three sides, and this is an example of the type  
12 of stuff that's in there. This came out better than I  
13 thought.

14 This is the inside. He has a processing  
15 line where they're picking out cardboard, metal and wood.  
16 I think he also does plastic now, too. And then here's  
17 just an example of the cardboard packaging that he's been  
18 able to pull out from these bins.

19 That -- I can talk a little bit about the  
20 problem we ran into with AB 59 requirements which  
21 basically said that a facility that is required to have a

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22 permit must have one, or the LEA has to issue a cease and

23 desist order.

24           So when it was initially developed, there

25 was a stay order that actually expired in January. So

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1 what's going to help it now for these regulations, and  
2 actually any new regulations after, is that a facility  
3 that currently does not have a permit, but which would  
4 have to have one because of the new regulations, would be  
5 immediately subject to a cease and desist order. So we  
6 originally talked about doing operative dates for certain  
7 sections that related to permitting so that the operator  
8 would have an opportunity to actually get their permit  
9 before there was any possibility of a cease and desist.

10           However, in more recent discussions with  
11 OAL attorneys, they are suggesting that we instead do  
12 interim permits. So Deborah Borzelleri has worked on some  
13 new language for that and I'll let her talk about that  
14 when that comes up.

15           I think that pretty much covers what I was  
16 going to talk about today. If you have any questions, I  
17 will be happy to try and answer them.

18           CHAIRMAN EATON: Any questions of  
19 Ms. Kiese?

20           BOARD MEMBER PENNINGTON: Mr. Chairman.

21           CHAIRMAN EATON: Mr. Pennington.

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22 BOARD MEMBER PENNINGTON: I'm interested to

23 know what the fee structure is here, too. Notification,

24 are they paying a fee on the registration?

25 MS. KIESSE: What you're referring to is

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1 the Integrated Waste Management fee, and that is for  
2 disposal sites that have a permit. So if you are a  
3 disposal site that is either in the registration tier or  
4 if you have a full permit, then you're subject to \$1.34  
5 per ton as determined in the statute.

6 BOARD MEMBER PENNINGTON: Okay.

7 CHAIRMAN EATON: Thank you. All right.

8 Does that conclude staff's presentation? Okay.

9 Any questions of staff before we get into  
10 the number of public speakers?

11 Ms. Joan Edwards.

12 We'll take a short technical break and be  
13 right back.

14 (Brief recess taken)

15 CHAIRMAN EATON: Ms. Edwards.

16 MS. EDWARDS: Thank you. My name is Joan  
17 Edwards. I'm with J. Edwards and Associates, a consulting  
18 firm on solid waste and recycling issues. I have  
19 testified -- provided written commentary and also  
20 testified in person at previous hearings and have followed  
21 the issue of C&D regulations pretty much since the

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22 inception about two years ago.

23 Today, I have also been asked to speak on

24 behalf of the small inert mine reclamation facility in

25 Rolling Hills Estates, Chandler's. I spoke to the owner

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1 about the testimony that I planned to give on my own, and  
2 because it does not appear that he objects to any of my  
3 personal testimony and there's probably only one issue  
4 that he might not have raised himself, I'm not going to  
5 try and speak twice. I'm going to combine it and point  
6 out where we might have different views.

7           I do believe that many of the recommended  
8 changes that I and other people made that related  
9 particularly to recycling issues of interest to us have  
10 been made by staff, particularly the issue of allowing the  
11 10-percent figure to be by weight instead of by volume,  
12 and by month rather than by day. So I'm also pleased that  
13 the AB 59 issue has been recognized since last fall by  
14 staff. And while I am a little worried that Office of  
15 Administrative Law will not take kindly to the  
16 recommendations of staff, I am glad that they're  
17 determined to try and find a way to ease the problems that  
18 are clearly going to happen to those facilities that have  
19 been operating under your interim policy which is telling  
20 LEAs, basically, to leave people alone until we figure out  
21 what we want to do.

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22 I am, though, mostly disappointed, and I  
23 never thought I would be here talking mostly about inerts,  
24 but I am disappointed that issues that have been raised  
25 for over a year about inerts, lack of staff research on

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1 specific issues that relate to inerts, and understanding  
2 C&D facilities cost impacts, and the potential for cities  
3 throughout the state finding themselves all of a sudden  
4 with artificially lowered recycling rates as a result of  
5 adding to the disposal portion of the equation, still have  
6 not really been dealt with. And I think we've been  
7 talking about them for a long time.

8 I would much rather see us all be able to  
9 spend our time talking about the issues of mixed  
10 processing facilities for recycling, an issue that I don't  
11 think has to be dealt with in more detail in these regs,  
12 but which the Board is going to have to face in the near  
13 future.

14 To me, to treat a facility that recycles 11  
15 percent of incoming sandy material the same as a facility  
16 that recycles 9 percent of incoming material is not an  
17 appropriate way to use your power of policy, regulatory,  
18 and financial incentives. And I would like to see that  
19 dealt with in the future.

20 My easy comments first. I think that there  
21 are major substantive changes from last fall's version,

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22 and it doesn't seem fair for you to plan on having a  
23 15-day comment period, even if it were fair in the context  
24 of what you believe is appropriate for these regulations.  
25 You are really setting a standard that in the future you

1 will have to meet. It's almost as if you would have to  
2 switch from C&D regs to yard waste regs for there to be  
3 substantive difference the way you're interpreting that  
4 language.

5 I believe and I have previously testified  
6 that there are big financial issues at stake here.  
7 Construction contractors, demolition contractors, without  
8 question will pay at least 50 percent more for disposal of  
9 inert materials if these regulations are passed as  
10 proposed, and I think that is something that staff easily  
11 could have researched and should have.

12 Similarly, last fall and in January, I said  
13 that I didn't have a list of inert facilities, but I bet  
14 anyone dinner that it would net you all \$10 million a  
15 year, and I think that that number is starting to be  
16 increasingly used as you will understand the tonnages that  
17 are out there.

18 Still left unresolved by these regs is the  
19 issue of what will happen to localities who previously did  
20 not have to count disposal of inerts at a facility like  
21 Chandler's, or anybody else's who did have not a permit,

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22 and all of a sudden have to add to the disposal portion of  
23 the recycling equation. What was previously a 40 percent  
24 diversion rate quickly will become the 30 or 35 percent  
25 rate.



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1 BOARD MEMBER ROBERTI: Mr. Chairman.

2 CHAIRMAN EATON: Senator Roberti.

3 BOARD MEMBER ROBERTI: I sympathize with

4 the problem that the localities have, but it strikes me

5 that if construction and demolition is going to a mine

6 reclamation site, why should that be included in the

7 diversion rate except for the question of dashed

8 expectations? Because that material is not being recycled.

9 MS. EDWARDS: You misunderstand me. I --

10 no way, 100 percent in no way am I even remotely

11 suggesting that this material should count as diversion.

12 I'm simply pointing out that you're doing the absolute

13 reverse. Some localities that never counted it as

14 diversion will now have to count it as disposal because

15 they have a permit. And under law, if you have a disposal

16 permit, you must count it in your quarterly numbers.

17 That's all I'm saying. I absolutely agree that inert

18 material should never -- it's appalling to think of dirt

19 and rock counting for recycling and I agree with you.

20 And still after 18 months, we don't know

21 what we're talking about in terms of tonnage numbers,

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22 material types, where in the state. I don't think that is  
23 good precedent for us to set as we continue with tier  
24 regulations, and I think it might have resolved some of  
25 the extensive discussion that went on with Item 4.

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1 I want to focus a bit on inerts and why one  
2 might or might not regulate inert facilities. I  
3 personally, while I do not want to see inert facilities  
4 counted as diversion in any way, shape or form, I see  
5 little positive impact and major potential for  
6 considerable harm yet again to the spirit and intensive AB  
7 939 goals through this Board action.

8 I want us to think about how -- what are  
9 the reasons for regulating it? Will it help recycling?  
10 Well, I don't think it will help recycling. By recycling  
11 dirt, dirt is not something from C&D that normally gets  
12 recycled, rock, asphalt and the like. By encouraging  
13 movement of mixed inerts towards Class 3 landfills through  
14 whittling down differential fees, and we will be whittling  
15 down fees, that's just the opposite of good public policy  
16 and the document that the Board itself endures toward  
17 ensuring adequate landfill capacity that was published a  
18 few years ago. We want to see, or I think we should want  
19 to see, inerts moved out of Class 3s and into inert  
20 facilities, not recycled, but just a good public policy.  
21 By making mixed C&D ADC, even more cost

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22 effective and attractive to everyone, localities that  
23 haven't gotten to 50 percent yet, will say, "A-ha. This  
24 is great. I want to put it back on the landfill." You do  
25 know, I expect, about the trend toward pulverizing mixed

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1 C&D. All over the state equipment manufacturers are  
2 making a pretty penny, and landfill operators are buying  
3 equipment that essentially will allow them to take that  
4 pile, that ugly pile that you looked at in the pictures --  
5 sands, metal -- take the metal out and everything else  
6 that can be pulverized, you whack it down, crush it to  
7 bits, put it on top of the landfill, and recycling. And  
8 that is endorsed by this Board in past policy and is the  
9 inevitable result of where we're going in ADC regulations.  
10 I don't think that that is good policy, but it is policy.  
11 All right.

12 BOARD MEMBER ROBERTI: I don't follow you  
13 and I may be missing something. I don't follow you how we  
14 would be encouraging any more use of ADC than we've  
15 already encouraged.

16 MS. EDWARDS: I have two choices. I go to  
17 an inert fill or I bring it to a Class 3 landfill and I  
18 use it to meet my recycling goals. I have two choices. I  
19 pay an increased fee at an inert fill that is going to be  
20 about 50 percent more at least, or I take advantage of the  
21 extremely nice differential fees at a Class 3 landfill for

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22 ADC. I would rather see the inerts taken out, put in the

23 inert landfill, and the rest of the material recycled.

24 BOARD MEMBER ROBERTI: But they're paying

25 at both. They're paying at both facilities.

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1 MS. EDWARDS: And this is where I believe  
2 that staff has done a --

3 BOARD MEMBER ROBERTI: Is the charge at the  
4 Class 3 lower than it would be at the inert landfill or  
5 the inert mine reclamation, whatever you want to call it  
6 this week?

7 MS. EDWARDS: I think --

8 (Laughter)

9 BOARD MEMBER ROBERTI: I don't want to  
10 judge the case ahead of time by giving it a name.

11 MS. EDWARDS: That's part of the point I  
12 was trying to make earlier. You asked a lot of questions  
13 of people who represented the mine reclamation facilities  
14 and inert facilities earlier. You asked them questions,  
15 among others, about the economics. I don't think you  
16 should have had to have asked them. I think staff should  
17 have told you. And in fact, yes, 100 percent, there are  
18 situations in the state when you take into account that  
19 the inert facility is going to go up and you get a  
20 differential fee for ADC and it goes down, and in some  
21 areas of the state they're so desperate for tonnage at

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22 Class 3s, that they're striking deals all over the place.

23 "This is my gate fee, \$34. I'll give it to you for \$17."

24 It happens all the time.

25 BOARD MEMBER ROBERTI: We'll give it to you

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1 for \$17. That must be contingent upon if you do  
2 something.

3 MS. EDWARDS: That's right.

4 BOARD MEMBER ROBERTI: If you do what?

5 MS. EDWARDS: If you bring it into me as  
6 ADC.

7 BOARD MEMBER ROBERTI: Staff, is that  
8 normally what we consider the situation, that they get the  
9 cheaper Class 3 landfill fee if they bring it?

10 MS. KIESSE: It seems to vary, but normally  
11 if the operator feels that they can use it for ADC,  
12 they'll give them a break on the tip fees, so sometimes  
13 it's \$10.

14 BOARD MEMBER ROBERTI: They get a break.

15 MS. KIESSE: Right.

16 BOARD MEMBER ROBERTI: And the sister  
17 landfill ten miles down the road, which is really a mine  
18 reclamation inert, would it normally be the practice for  
19 them to be charging the Class 3 going fee?

20 MS. KIESSE: I haven't looked at all of  
21 them, but some of them have pretty low tip fees, might be

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22 \$2.50 or \$3.50 a ton.

23 BOARD MEMBER ROBERTI: So their fee is

24 probably -- you're saying their fee is probably cheaper.

25 The inert thing, whatever we want to call it, is probably

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1 cheaper than the Class 3 ADC --

2 CHAIRMAN EATON: Option.

3 BOARD MEMBER ROBERTI: Option.

4 MS. KIESSE: Right. Right. That's true.

5 BOARD MEMBER ROBERTI: So that seems to be

6 in disagreement with the witnesses.

7 CHAIRMAN EATON: I thought so.

8 MS. KIESSE: Well, if -- I think what --

9 Joan, correct me if I'm wrong -- but if the inert sites --

10 mine reclamation, whatever -- need to be permitted. I

11 think what she's saying is that their fees and -- so

12 people would tend to take it to the Class 3 site rather

13 than take it to the inert fill.

14 BOARD MEMBER ROBERTI: I understand what

15 she's saying because any time you're going to charge

16 somewhere, there's going to be an impact, if only for the

17 fact the transportation costs depending on where you're

18 located may increase or decrease because of proximity and

19 that will all be factored in. But I think the witness was

20 saying something more than that, if I'm not putting words

21 in your mouth, and that is in effect that the charges at

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22 the inert are going to be higher than the charges at a

23 Class 3 for ADC. I think she was saying that.

24 MS. EDWARDS: Actually, you are slightly

25 putting words in my mouth. I said that prices will go up

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1 at inert facilities substantially. Prices already go down  
2 at Class 3s, depending on whether you need tonnage and  
3 whether you bring in something for ADC.  
4 I said that we're wiping away the  
5 differential, and that in some locations that differential  
6 may even equalize, might even be more in some cases, but I  
7 wasn't emphasizing that. But that differential is now  
8 going to start to move some tonnage from inert facilities  
9 to Class 3s. Yes, I do believe that.

10 BOARD MEMBER ROBERTI: There will be an  
11 impact because suddenly at inerts you're going to have to  
12 be charging, where otherwise you weren't charging. That  
13 charge may still be less than anything at a Class 3, but  
14 given other factors, you might reduce.

15 MS. EDWARDS: It's more economically  
16 attractive. I'm next door to the Class 3, but I used to  
17 drive to the inert facility because of this. Now I might  
18 go to the Class 3. This happens all the time.

19 BOARD MEMBER ROBERTI: I understand.  
20 That's narrower than my initial interpretation of your --

21 MS. EDWARDS: What you did not

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22 misunderstand is that I believe the impact will be

23 substantial, just as people don't compost very much, at

24 least compared to what they could in Southern California.

25 Why bother when you can bring it for ADC and, in fact, the

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1 City of L.A., one of the biggest examples of good policy,  
2 composting green waste, has been quite clear in the last  
3 year that they're going to stop and start dumping it as  
4 ADC and as cover in the future because of economic  
5 reasons.

6 CHAIRMAN EATON: Mr. Jones had a question.

7 BOARD MEMBER JONES: I don't want to get  
8 this more confused than it is, but I think going to  
9 Senator Roberti's issue, when you're talking about the  
10 substantial raise, you're looking at somebody that's  
11 charging \$2.50 a yard for material coming in would now go  
12 up to \$3.84. That's a substantial raise obviously in the  
13 fee.

14 One of the other things -- and you related  
15 to ADC. I think the other thing that historically has  
16 happened in our industry is we need that material for  
17 foundation for roads, for those types of things, winter  
18 pads, where, depending on the wastestream and what's  
19 coming into a landfill, you'll actually advertise that  
20 you'll take it for next to nothing to get it in so you're  
21 not paying some dirt hauler to haul it in from one of -- I

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22 don't want to say it -- from a rock quarry to bring it in

23 as foundation material. You'll use that material, and

24 that's where the differential is.

25           So I think she's absolutely right. When

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1 you look at a percentage base, the inert sites go up  
2 considerably based on the \$2.50 ton fee.  
3 That's one of the bad parts about this,  
4 this process, is that an inert -- an inert site is going  
5 to charge. If the guy across the street has a sign that  
6 says "clean fill wanted," you dump there for free and it's  
7 not part of the wastestream, it's not counted as  
8 generation, you don't pay the fee. And if you go to the  
9 landfill further down the street, you don't pay the \$1.34  
10 because it will be stockpiled for construction purposes or  
11 ADC. That's one of the problems with the equity issue on  
12 this.

13 CHAIRMAN EATON: Ms. Edwards, I would  
14 greatly appreciate it if you could wind up or make your  
15 remarks. I do have a number of slips and a number of  
16 individuals that have been here all day, and I would  
17 greatly appreciate it on behalf of the Board and everyone.  
18 If there's something you wish to speak to in the  
19 regulation and/or the other motion --

20 MS. EDWARDS: All right. I'm not  
21 suggesting that inert disposal facilities, all inert

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22 disposal facilities are created equal and none should be  
23 regulated nor am I suggesting that all should be regulated  
24 equally. I do believe that the stricter definition of  
25 inert that was discussed by earlier speakers, a strict

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1 definition that takes care of your concerns about  
2 environmental problems, could be used to say that  
3 facilities that meet this definition of inert will have  
4 this type of regulation and this type of exclusion from  
5 fees, thus equalizing a bit the issues of moving material  
6 to Class 3s while preserving environmental problems.

7 BOARD MEMBER ROBERTI: I would probably  
8 agree with you with one proviso. You said that you're  
9 representing Chandler's as well, so maybe that gives me an  
10 opportunity, a segue into something which nobody seems to  
11 understand, maybe I don't understand it myself, but that  
12 is, you said, in Rolling Hills Estates?

13 MS. EDWARDS: Yes.

14 BOARD MEMBER ROBERTI: Which I didn't know  
15 had anything like mine reclamation let alone a landfill  
16 but nevertheless.

17 CHAIRMAN EATON: We never walked there,  
18 Senator.

19 (Laughter)

20 BOARD MEMBER ROBERTI: No relation there.  
21 But a lovely community. I want to get to my point.

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22 BOARD MEMBER PENNINGTON: One of them.

23 BOARD MEMBER ROBERTI: And that is -- that

24 is, is there anything -- can staff help me or maybe the

25 witness can help me -- is there anything in our closure of

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1 a landfill documentation, for lack of knowing the word of  
2 art to the extent that I should, which would, if we say  
3 that Chandler is closed now as a mine reclamation/landfill  
4 which would indicate to anybody who subsequently would  
5 want to develop there, that this now is ready for  
6 purchase, development, beneficial use, considering the  
7 fact that Rolling Hills Estates -- beautiful as it is --  
8 is not the most stable area in the western world, either  
9 for faults or for landslides, if it's near any landslide  
10 area -- I don't know where Chandler is -- which is the  
11 other aspect of my concern. Not just the inert non-mixing  
12 with oxygen concern, non-combustible concern, but the  
13 stability of the area. Is there anything in our closure  
14 documents which deals with that stability question? Maybe  
15 the witness can help me.

16 MS. EDWARDS: I can't answer with regard to  
17 your closure documents. I know that Chandler's -- and  
18 they will be sending you a letter -- but I know Chandler  
19 is in fact destined for housing development through  
20 engineered inert fill for a portion of their landfill.  
21 The portion that's not engineered inert landfill is

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22 destined for a golf course. So they're meeting the  
23 requirements of not only their future development desires,  
24 but the City's desire for them to get out of the business.

25 BOARD MEMBER ROBERTI: The portion that is

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1 geared for, is destined for golf course is the --

2 MS. EDWARDS: They both get the same

3 material, it's just that one clearly meets engineered

4 inert fill requirements.

5 BOARD MEMBER ROBERTI: And that would be

6 the housing.

7 MS. EDWARDS: The housing.

8 BOARD MEMBER ROBERTI: And the other --

9 MS. EDWARDS: And the other does have not

10 to.

11 BOARD MEMBER ROBERTI: Okay. Is there

12 anything in our closure documents which would -- if and

13 when Chandler closes, which would give the owners, users,

14 golfers, whoever is going to be at the golf course, and

15 certainly even more so at the housing facility, the

16 feeling that this land is stable considering the already

17 insecure geology of the peninsula down there? This kind

18 of helps me with trying to figure out my own --

19 CHAIRMAN EATON: All right.

20 MR. WOCHNICK: Senator Roberti, I'm Michael

21 Wochnick with our Closure and Remediation Unit. In regard

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22 to your question as far as closures, we have not, as a  
23 unit, overseen post-closure land uses on what would be  
24 considered inert sites.

25 BOARD MEMBER ROBERTI: What? We haven't

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1 overseen what?

2 MR. WOCHNICK: We haven't overseen  
3 post-closure land uses on inert sites. We've been looking  
4 for municipal solid waste landfills. There are  
5 post-closure regulations that we currently have that  
6 specify what conditions have to be met for development on  
7 closed landfills, or MSWs.

8 BOARD MEMBER ROBERTI: Doesn't that depend  
9 on what our definition is going to be, if we're going to  
10 say -- if we're going to continue with mine reclamation  
11 site as something apart from landfill, then we don't have  
12 anything.

13 MR. WOCHNICK: Right.

14 BOARD MEMBER ROBERTI: If we're going to  
15 call it a landfill, then we do have some processes which  
16 will give some guidance to the people who are going to be  
17 either constructing the housing or even the golf course.

18 MR. WOCHNICK: Correct. The current  
19 regulations are pretty much on the basis of landfill and  
20 the issue of landfill gas is what they're mainly concerned  
21 with requirements for setting liners, alarm systems, et

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22 cetera, for building on top.

23 BOARD MEMBER ROBERTI: That's on our

24 landfill regulations.

25 MR. WOCHNICK: Our current landfill

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1 regulations, yes.

2 BOARD MEMBER ROBERTI: Do we go into the  
3 question at all of the stability of the land when it's  
4 filled with engineered C&D, or whatever our word is? The  
5 golf course, whether it's going to undulate or not.

6 MR. WOCHNICK: At this point, not for inert  
7 sites. We have not been looking at inert sites for --

8 MS. KIESSE: If I may. In the proposed  
9 regulations, Section 17388.1, closure and post-closure  
10 standards, there's actually two subsections. And we make  
11 the distinction between disposal sites that take only Type  
12 A and -- I have 3442, whatever that means.

13 5-41. There are two subsections there.  
14 One is A, which refers to Inert Waste Type A disposal  
15 facilities, and they're more -- they're minimal, I would  
16 say, closure requirements as compared to the ones for C&D  
17 which is in subsection B. If you want me to go over them,  
18 it's --

19 BOARD MEMBER ROBERTI: Yes.

20 MS. KIESSE: For Type A, that's the inert  
21 inerts, the operator shall provide the EA with a written

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22 notice of intent to close the site at least 30 days prior  
23 to closure. The operators and owner shall provide site  
24 closure to protect public health, safety, and the  
25 environment. The operator shall ensure that the following

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1 closure procedures are performed upon completion of  
2 operation and termination of service.

3           A, all fill slopes shall not exceed 2 to 1  
4 horizontal for vertical except for site geologic and  
5 analysis demonstrate that the proposed final slope will  
6 have a minimum slope stability factor of safety suitable  
7 for the proposed end use and when the proposed final slope  
8 can be successfully revegetated.

9           B, the operating grounds, excluding the  
10 disposal area, shall be cleaned of all construction and  
11 demolition scraps and other materials related to the  
12 operation, and these materials legally reused, recycled or  
13 disposed.

14           C, all machinery and equipment shall be  
15 removed from the site.

16           D, prior to closure, all access roads, haul  
17 roads, and other traffic routes shall be stripped of any  
18 remaining road base materials.

19           E, areas of disturbed ground shall be  
20 covered with 18 inches of compacted soil.

21           F, at a minimum a vegetative cover capable

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22 self-regeneration without continued dependence on  
23 irrigation, soil amendments or fertilizer shall be planted  
24 on disturbed areas during the most favorable period of the  
25 year for plant establishment.

1           And if it's not a Type A disposal facility,  
2 then it's a construction and demolition or Inert Type B,  
3 then they comply with the existing closure and  
4 post-closure maintenance required set forth in Title 27,  
5 Chapter 3, Subchapter 5, commencing with Section 21100.

6           CHAIRMAN EATON: You're talking -- cut to  
7 the chase, if I can help. Are you saying that whether it  
8 be Inert Type A, notification registration, irrespective  
9 of that have to meet 17388.1? In other words --

10          MS. KIESSE: Don't use notification. It's  
11 only for disposal.

12          CHAIRMAN EATON: Okay. So it's disposal.

13          MS. KIESSE: We're only talking about  
14 disposal sites. Right.

15          CHAIRMAN EATON: So if they're doing  
16 something else like --

17          MS. KIESSE: If they're processing, then  
18 they're not disposing.

19          CHAIRMAN EATON: Okay. And how about if  
20 they're -- just where do you include mine reclamation  
21 projects?

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22 MS. KIESSE: Right now it is considered

23 disposal.

24 BOARD MEMBER ROBERTI: This regulation

25 right now would cover a mine reclamation site that was

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1 taking in Type A.

2 Well, it strikes me that there is some  
3 geologic stability determination that we're supposed to  
4 make; is that right? But it does indicate in current  
5 Section 17388.1 a direct -- not a directive, an opening  
6 that this is within our purview where we discussed here --  
7 where it's discussed, the integrity of the sloping.

8 It does seem to indicate to me -- that even  
9 this regulation indicates some geologic stability factors  
10 that this Board should take into consideration,  
11 irrespective of what new regulations we want to impose  
12 upon it as well.

13 MS. NAUMAN: This is what we are proposing.  
14 Right now, we do not have any closure or post-closure  
15 processes or requirements for the types of facilities that  
16 we're talking about. This would bring them under the  
17 umbrella.

18 BOARD MEMBER ROBERTI: I would like to know  
19 from witnesses for industry if they can argue as to why  
20 they shouldn't have to pay a permitting fee -- is that our  
21 word -- for discussing the security of the geology in a

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22 given area. Maybe they can't. I don't want to prejudge

23 the case, but that's something they haven't addressed in

24 the presentation.

25 CHAIRMAN EATON: Ms. Denise Jones.

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1 MS. JONES: Denise Jones of the California  
2 Mining Association. I just wanted to outline for you the  
3 existing regulations which exist for all mine reclamation  
4 sites. It's California Code of Regulation Article 9,  
5 Section 3704, Performance Standards for Backfilling,  
6 Regrading, Slope Stability, and Recontouring. These were  
7 adopted in 1991.

8 Section A, where backfilling is proposed  
9 for urban uses such as roads, building sites, or other  
10 improvements sensitive to settlement, the fill material  
11 shall be compacted in accordance with Section 710, Chapter  
12 70 of the Uniform Building Code published by the  
13 International Conference of Building Officials in 1991,  
14 the local grading ordinance or other methods approved by  
15 the lead agency as appropriate for end use so that mine  
16 reclamation sites that have any sort of backfilling are  
17 already required to comply with these provisions for urban  
18 uses. Conservation practice purposes such as agriculture,  
19 fish and wildlife habitat, and wildland conservation, fill  
20 material shall be backfilled to the standards required for  
21 the resource conservation use that's involved.

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22           So there's no question that the mining  
23 industry is more than willing to discuss the geology and  
24 the stability of the site. But we're already doing that  
25 under existing State Mining and Geology Board regulations

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1 which have been adopted.

2 In terms of fill slopes, it requires final  
3 fill slopes, including permanent piles or dumps of mine  
4 waste (inaudible) overburden shall not exceed 2 to 1  
5 horizontal or vertical except when site-specific geologic  
6 and engineering analysis demonstrates that the proposed  
7 final slope will have minimal slope stability for safety.  
8 I think the language in the proposed regs come out of this  
9 language here.

10 We're not arguing that we don't need to do  
11 this. We're already doing it.

12 BOARD MEMBER ROBERTI: Let me ask our  
13 staff, then. Why is there a necessity, if the Department  
14 of Geology -- I don't know if that is the word -- is  
15 requiring this already, why do we find this a necessity to  
16 include in our regulation, our proposed regulation? Is  
17 there an area for us to enforce that isn't already being  
18 enforced?

19 MS. KIESSE: From my conversations with  
20 Office of Mine Reclamation, it was my understanding that  
21 it's basically a local decision and that there's not a lot

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22 of consistency, so once we establish that we would have  
23 this type of facility within our jurisdiction and we  
24 needed to address closure and post-closure. So what we  
25 did actually was to -- actually, it's very similar to the

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1 post-closure in SMARA that we made the distinction so they  
2 wouldn't have to follow the regular post-closure for  
3 landfills that we have in our regulations at this time.

4 BOARD MEMBER ROBERTI: So you're, in  
5 effect, saying that if this Board regulates this pertinent  
6 section, there will be a uniformity and consistency,  
7 whereas under the current jurisdiction, which seems to  
8 reside in the Office of --

9 MS. KIESSE: Office of Mine Reclamation.

10 BOARD MEMBER ROBERTI: -- Office of Mine  
11 Reclamation, it's mostly on a local basis and therefore  
12 uncertain?

13 MS. KIESSE: That was my understanding,  
14 yes.

15 BOARD MEMBER ROBERTI: What do you mean by  
16 a "local basis"? The Office of Mine Reclamation, isn't  
17 that a State agency?

18 MS. KIESSE: Yes. It's an office within  
19 the Department of Conservation, and they actually rely  
20 very heavily on our local agencies, and so that's --

21 BOARD MEMBER ROBERTI: So by "local," you

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22 mean subdivisions of the state agencies, not cities and

23 counties.

24 MS. KIESSE: Might be the County Planning

25 Department.

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1 BOARD MEMBER ROBERTI: Really?

2 MS. KIESSE: So there was this perceived  
3 inconsistency as to how separate mine reclamation sites  
4 could be regulated.

5 BOARD MEMBER ROBERTI: But whatever the  
6 closure document on a mine reclamation does take into  
7 consideration, whether it's -- certainly if it's via CIWMB  
8 regulations and even under the current practice of the  
9 Office of Mine Reclamation, takes into consideration  
10 geologic factors.

11 So that gets me to the point again of why  
12 shouldn't -- I'm thinking out loud now. Why shouldn't  
13 maybe the industry spokespeople, as they come up -- why  
14 shouldn't the industry pay a permitting fee if they want  
15 to use that property for golf courses or for housing or  
16 for a mini-mall? Because there are factors involved other  
17 than the competitive charges, vis a vis a landfill, and  
18 even the factors independent of the amount of methane,  
19 important as that is, that is extracted from the property.  
20 And it's a geologic stability which we have to permit  
21 being one of them. I still tend to lean that they should

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22 have to pay something for that, whether it's a full permit

23 or not, something should be paid. And I'd like them to

24 address that because I haven't heard too much on that

25 except for the last witness.

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1           CHAIRMAN EATON: Since we started with the  
2 opposition to the regs, why don't we continue with those  
3 speakers and perhaps they can cover the Senator's -- next  
4 would be Betty Wood from Tygart and Associates. Is she  
5 still here? The chosen one. They're all behind you.

6           MS. WOOD: Yes, they are. I have lots of  
7 support. My name is Betty Wood and I'm with Tygart and  
8 Associates.

9           First off, I would like to say Marcia has  
10 worked very diligently on these regulations. We  
11 appreciate all her effort.

12          Reading the staff report, there were a  
13 couple of questions that I had that I think gets to the  
14 heart of why we need to do this, and that is the staff  
15 report brought up that there were other health and safety  
16 issues. And I don't think industry understands what some  
17 of your concerns are on these health and safety issues  
18 because most mining operations that are backfilling under  
19 SMARA regulations. I personally don't know of any that  
20 have had groundwater contamination or other health and  
21 safety issues associated with them. So some clarification

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22 on that would be appreciated.

23           Also, the staff report said that oversight

24 is only needed where a lack of regulations occurs, which

25 implies that maybe there are some cases where there's not

1 a lack of regulation and there are some places that are.  
2 So trying to determine maybe which operations require  
3 additional oversight and which don't would be helpful.  
4         Listening to everything that's going on, I  
5 know we keep getting back to local control and  
6 inconsistencies throughout the State in part due to this  
7 local control. SMARA is regulated at the local level.  
8 Your regulations are also regulated at the local level. I  
9 think we're talking about the same people coming out and  
10 doing the same kind of inspection that they're already  
11 doing. We do pay fees, annual SMARA fees, for that  
12 inspection and for that oversight and for that closure  
13 activity that's happening. We pose financial assurances,  
14 bonds, in order to make sure that we do do the closure  
15 that we say we're going to do. I hope those maybe address  
16 some of your concerns, Senator Roberti.  
17         I would like to propose to you a  
18 hypothetical of -- I have a facility, a mining site, that  
19 SMARA plan requires backfilling the pit floor up to a  
20 certain level. I have Water Board, I have a WDR for the  
21 site, the Water Board has oversight. They very tightly

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22 control what material comes in and do annual inspections

23 and I do annual reporting to them.

24 Your proposed regulations have a level of

25 administrative burden that perhaps my company just is not

1 going to want to deal with. We're not going to want tie  
2 up our truck scales weighing these trucks. We're not  
3 going to want to change our computer programming in order  
4 to separate billing out and track all the things that you  
5 want us to track. So we stop accepting construction and  
6 demolition debris to backfill our pit, which in our case  
7 means soil, asphalt, concrete. That's it. No wood, no  
8 tires, none of this other stuff.

9 CHAIRMAN EATON: What do you put in place  
10 of it, then? If were you to do that.

11 MS. WOOD: In place of it, now Company A  
12 over here is going to take the concrete and asphalt and  
13 dirt and take it in under diversion for reuse. And we're  
14 going to go over and get it from them and put it in our  
15 pit under the same rules that already govern what we can  
16 put down in there. So --

17 CHAIRMAN EATON: So do you get the  
18 diversion? Who gets the diversion, then?

19 MS. WOOD: Wherever the jurisdiction of  
20 Company A happens to reside, whether that's within the  
21 city limits or within the county. It's there. They're

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22 saying yes, we're taking this in and it's for reuse. Who

23 do they sell it to? They sell it to us to now go put in

24 our pit.

25 CHAIRMAN EATON: So it costs you more.

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1 MS. WOOD: It costs us more.

2 CHAIRMAN EATON: That's where I'm trying to  
3 get.

4 MS. WOOD: You don't have to pay the fees  
5 because it's going for reuse, and it's counted as  
6 diversion. This could be your worst nightmare, and the  
7 same thing could still be happening, and the same end use  
8 is still happening. And yet, Mr. Jones, your worst  
9 nightmare is occurring because right now we don't count as  
10 diversion what we take in, but under that scenario, it  
11 could happen.

12 BOARD MEMBER JONES: Can I ask a couple of  
13 questions?

14 CHAIRMAN EATON: Mr. Jones.

15 BOARD MEMBER JONES: You talked that under  
16 the SMARA, that you had to post a bond. What if you went  
17 out and bought a piece of property that was a former mine,  
18 former pit, and developed it as a landfill. Would you  
19 have any SMARA obligation and who would oversee it?

20 MS. WOOD: That would depend completely on  
21 the piece of property that you got, and if it was a

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22 pre-SMARA abandoned pit, then no.

23 BOARD MEMBER JONES: Then Mines and Geology

24 would not oversee it.

25 MS. WOOD: Mines and Geology wouldn't.

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1 BOARD MEMBER JONES: Wouldn't; correct?

2 MS. WOOD: Would not. Would Not. Mines  
3 and Geology would not. However, your local land use  
4 people would have some say over how you could use that  
5 piece of property and what its zoning was. And going  
6 through that whole zoning process and getting your  
7 conditional use permit to operate your landfill, you would  
8 trigger whatever appropriate regulations there were.

9 BOARD MEMBER JONES: Right. But I think  
10 part of your answer goes to all of those sites that are  
11 pre-SMARA, which a lot of the sites that we're talking  
12 about with the fee are pre-SMARA, and Mines and Geology  
13 don't have oversight of those.

14 MS. WOOD: That's correct.

15 BOARD MEMBER JONES: So it is an  
16 unregulated element in the mining industry.

17 MS. WOOD: No.

18 BOARD MEMBER JONES: Other than a local  
19 CUP. I mean, when you talk about financial assurances,  
20 when you go in and do a mine project -- okay -- I had a  
21 little bit of experience with one of those that had posted

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22 a \$4 million bond and wanted to turn it into a landfill  
23 and demanded from the County that they release the \$4  
24 million bond for remediation of the site because now our  
25 rules, although I wasn't part of the Waste Board then, but

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1 the Waste Board's rules would supersede those because they  
2 would have to put in a closure post-closure.

3 MS. WOOD: Right.

4 BOARD MEMBER JONES: And that would take  
5 care of the financial assurances. This site was never  
6 built. It never happened, but the effort was to get the  
7 \$4 million released and for whatever reason. So I think  
8 there are levels of assurance that go away at some point;  
9 correct?

10 MS. WOOD: There are, but you have to  
11 satisfy your local lead agency before they will release  
12 your bond. So and -- that's where you get down to what  
13 kind of rapport you have with your local agency and what  
14 is it that they want.

15 BOARD MEMBER JONES: And the sophistication  
16 of the local related agency.

17 MS. WOOD: Yes.

18 BOARD MEMBER JONES: Because that's part of  
19 the problem is when they don't understand this menu of  
20 rules that we have, that all these different agencies  
21 have, they don't know when they're covered or not covered.

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22 MS. WOOD: Correct. And this may only make

23 things worse by giving them one more layer of regulation

24 that they have to deal with.

25 I think that if pre-SMARA sites are your

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1 concern, then I think the regulations could be written to  
2 address that. I don't know that post-SMARA sites need the  
3 same level of regulation that pre-SMARA sites do.

4 BOARD MEMBER JONES: Right.

5 MS. WOOD: And I don't think the problem is  
6 as big as you may perceive it to be on pre-SMARA sites. I  
7 don't know that there are that many around that the land  
8 use could be used that way.

9 BOARD MEMBER JONES: It's possible. These  
10 just came forward in a rate package. We didn't ask for  
11 it. It was just part of the reg package.

12 I think one of the things that you say when  
13 C&D, sites that you're not aware of any that are creating  
14 environmental problems, I will tell you that one of the  
15 issues that brought this to the level is Mr. Chandler and  
16 I were back in Washington D.C. at ASTSWMO, which is the  
17 Association of State and Territorial Solid Waste Managers  
18 that deal directly with USEPA.

19 USEPA was going down a track where they  
20 didn't think it was necessary to look at inert or C&D  
21 study sites just from the standpoint of -- in comparison

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22 when they study a site. When they started talking about  
23 that, I will tell you, literally, six states jumped out of  
24 their seats, states that have three landfills in the  
25 entire state -- two being C&D and inert and one being

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1 MSW -- and saying that every environmental problem that we  
2 have in our state comes from that C&D site and that inert  
3 site, and it was one after another.

4           And it was a result of that that USEPA  
5 backed off of their direction that they weren't going to  
6 really get involved in this because all of the states  
7 said, "That's where our problems are. It's an unregulated  
8 issue that things are going in there that we don't even  
9 watch, and all of a sudden we've got problems," and all  
10 we're trying to do is say what's the appropriate level of  
11 environmental protection. And that's what we're trying to  
12 work through.

13           MS. WOOD: I would agree with that. And I  
14 would say if you're not careful about what goes in there,  
15 then you're going to end up with a problem. No matter how  
16 much regulation is out there, there is always going to be  
17 a bad player.

18           BOARD MEMBER JONES: You bet. I know.

19           CHAIRMAN EATON: Any questions of Ms. Wood?  
20 I hate to do this, but I know the court reporter needs a  
21 break very quickly. We need 10 minutes, and when we come

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22 back, we're going to move ahead and appreciate your

23 cooperation in trying to move the agenda along and

24 hopefully bring it to a conclusion.

25 Back at 10 after 4:00. Thank you.

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1 (Brief recess taken)

2 CHAIRMAN EATON: Welcome back. I'll ask  
3 any of our members about any ex parte communications that  
4 need to be reported. Mr. Pennington.

5 BOARD MEMBER PENNINGTON: Not I,  
6 Mr. Chairman.

7 CHAIRMAN EATON: Mr. Jones.

8 BOARD MEMBER JONES: Just a quick chat with  
9 Evan Edgar.

10 CHAIRMAN EATON: Senator Roberti.

11 BOARD MEMBER ROBERTI: No.

12 CHAIRMAN EATON: Okay. I'll wait for  
13 Ms. Moulton-Patterson when she gets back.

14 I just said a quick hello to Denise Jones  
15 and others in the Mining Association, talking about moving  
16 the proceedings along.

17 With that in mind, I'll bring Mr. Hirsh.

18 MR. HIRSH: Thank you, Mr. Chairman. I  
19 have a plane to catch here.

20 CHAIRMAN EATON: And I know that you would  
21 be quick. So we're in sync so far.

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22           MR. HIRSH: I would like to address Senator  
23 Roberti's question from the mining end, and I would like  
24 to make some general comments about what's been presented.  
25           First of all, I'm thoroughly confused. In

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1 your inert categories above A and B, you have materials,  
2 for instance, auto shredder fluff. Auto shredder fluff is  
3 considered hazardous if not treated by what they call a  
4 potassium silicate process. When it's treated with a  
5 potassium silicate process, which is a capsulation, it's  
6 considered special waste, which means it goes to a special  
7 designated situation, which means the receptacle is  
8 selected. It cannot go to an inert, just a plain inert  
9 facility.

10 Wood ash from cogeneration facilities, or  
11 biomass conversion as you call it, sometimes chemicals are  
12 mixed with those ash materials so that they get clean -- a  
13 cleaning effect in the process of burning within the  
14 facility. When that material comes out, in one case, if  
15 the truck is subjected to a large amount of water or just  
16 a water, you get a volcano effect in the back of the  
17 truck. So that is not an inert material. It creates what  
18 is known as a "Delta T" effect, which is -- it creates a  
19 "Delta T" effect means it's not inert, and a tremendous  
20 amount of heat is built up, which, if you put it in the  
21 right situation and the right disposal site, can create a

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22 problem.

23 BOARD MEMBER ROBERTI: And that's a what

24 now?

25 MR. HIRSH: It's called a "Delta T" effect,

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1 and what they do, Senator Roberti, is they put certain  
2 chemicals to help them clean out their equipment as they  
3 burn the material and relieve the ash. In one case, some  
4 of the chemicals they use, it only takes a mere addition  
5 of water. And I've seen the back of these trucks, 26 tons  
6 look like a mud volcano pit. So I'm a bit confused to  
7 what you're calling inert here.

8           The pictures, I'm also confused about the  
9 pictures you showed. Those are not mines. Those are just  
10 disposal sites.

11           Regulation, H.M. Holloway is a relatively  
12 new facility to accepting material for  
13 reclamation/disposal. We are only allowed to bring  
14 designated wastes out to the site. Those are wastes that  
15 are designated by the Regional Water Quality Control Board  
16 and regulated through the LEA. In order to get to that  
17 point in deciding what we could take, we had to do a site  
18 characterization of each pit. The present pit that we  
19 started out with is 51 acres. It cost \$350,000 to site  
20 characterize that pit with bore holes, with monitoring  
21 wells. That's taking a sample every five feet down to 60

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22 feet, 65 feet. In some cases, our monitoring wells go

23 down to 125 feet.

24 Our waste discharge requirements by

25 Regional Water Quality Control Board, when it comes to



1 metals or radicals, is just above primary drinking water  
2 standard. I would challenge a lot of the facilities in  
3 the waste disposal business to even take those on. I  
4 would be happy to exchange with you.

5           Performance bonds, we have a million-dollar  
6 performance bond for just our operations, and then we have  
7 a closure bond, as well, that we had to have before the  
8 LEA would allow us to operate. So the picture I'm seeing  
9 here -- and I'm going to be quick and get out of here.  
10 The picture that's been painted here is that there's no  
11 regulation. That's ridiculous. It took us two and a half  
12 to three years just to get permitted. And we went through  
13 the Boards, we went through -- we came to State clearing  
14 house twice.

15           So the information that -- if you're going  
16 to regulate mine facilities, that's great, if you do it  
17 right and everything goes fine and you make it, and  
18 there's no retroactive hand-slapping, as Mr. White  
19 indicated, on costs and fees, because we've gone through  
20 the process and we've done things right, and everybody had  
21 a chance to take a shot at us when we came to the State

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22 clearing house twice. So if you're going to regulate

23 mines, great. But this prefabrication of information

24 that's being presented is ridiculous.

25 Thank you very much. I would be willing to

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1 entertain any questions.

2 CHAIRMAN EATON: Hearing none?

3 MR. HIRSH: Thank you.

4 CHAIRMAN EATON: Thank you.

5 Mr. Appleton representing Hanson

6 Aggregates.

7 MR. APPLETON: My name is Larry Appleton.

8 I represent Hanson Aggregates. I've been in the business

9 for 35 years, and in my business I've been an engineer and

10 been in operation, I've been in environmental. I've torn

11 down 13 plants, built 17. All 13 left the site. We have

12 never buried a drum. There was nothing left on-site on

13 all of these depleted reserves. That's 13.

14 I sort of feel like we're being painted

15 with the same brush as the bad apple in the barrel because

16 you cite exceptions to the rule and then you say well,

17 you've all got to be regulated because of these bad

18 actors. I don't agree with it. I think it's sort of like

19 the attorney defending the legal profession in the bar and

20 you say, well, it's just 90 percent of the other attorneys

21 that give us a bad name. That's true except only ten

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22 percent of the jokes about attorneys are really jokes.

23 (Laughter)

24 MR. APPLETON: I gave the secretary a

25 letter, and the clerk, and that's what I was going to do,

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1 is just read the letter into the record. And I've heard  
2 so much since then that I feel compelled to talk a little  
3 bit more.

4 First of all was the resolution issue in  
5 that you're going to change a resolution on which we have  
6 relied on in both of these last two years. I was at the  
7 first meeting when we formed the task force and we were  
8 assured repeatedly that our operations were not included,  
9 and that was based on the resolution. Now, when we get a  
10 use permit and get a resolution passed by the Board of  
11 Supervisors, we rely on that forever. They don't change  
12 the resolutions just because they change their mind. I  
13 think that's kind of bad faith negotiating because every  
14 draft it sort of changes, but we're still in the draft.

15 Which brings us to the current draft, which  
16 I find very confusing, and based on the conversation I  
17 heard from both this side of the mike and that side of the  
18 mike, I think you guys find confusing, too. I don't see  
19 how we can pass a confusing regulation or even consider  
20 it. I'm talking confusing as to when do you require  
21 financial assurances? Is it registration, notification,

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22 or full permit? That's very confusing.

23 We operate a few landfills. They're called

24 unclassified landfills as permitted by Regional Water

25 Board, who set waste discharge requirements to land

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1 according to the (inaudible) Act. We take only  
2 concrete -- that's poured cement concrete and asphaltic  
3 concrete both. You can talk about cured asphalt.  
4 According to the State Water Board, technically that's  
5 after two years. I don't know how you define cured, and I  
6 don't know what difference it makes, because there are  
7 currently a lot of reservoirs lined with asphaltic paving  
8 (inaudible). We take dirt. We take toilets and crush  
9 those as a favor to the local agencies. We do not take  
10 any wood ash, wouldn't dream of it. Wouldn't take tires.  
11 I wouldn't take any petroleum contaminated soil. That's  
12 our landfill. Totally inert. Totally Type A, although I  
13 have to go further than you do in defining Type A.  
14 I find the information on the staff report  
15 appalling. First of all, it was late. I find these  
16 corrections today, which I can't possibly comment on, I  
17 will comment on. First of all, the interviews apparently  
18 have been with the State. The State is not the  
19 controlling agency, this is the lead agency. It's the  
20 County.  
21 Let's talk about the pre-1976 SMARA issues.

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22 I came to work for Kaiser Sand and Gravel in 1963. We  
23 were working off a use permit dated 1955, which means use  
24 permits came around and they had all kinds of conditions.  
25 That one had 47 conditions, including grading and

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1 revegetation, everything else, in 1955. The use permits  
2 proliferated with the incorporation of finding departments  
3 back in the '50s and '60s, and these use permits were very  
4 thorough. That's what we're working on now and we're  
5 still requiring a pre-1965 permit.

6           We're reclaiming. Part of what we're doing  
7 is providing slope protection because of (inaudible) water  
8 with broken concrete. That's probably not going to be  
9 called disposal, so I won't do that anymore.

10           The pre-1976 issue is not all as bad as  
11 it's purported to be. There are a few bad mines out  
12 there. I know of a few of them myself. They're abandoned  
13 and deserted? Are they a risk to the public health and  
14 environment? I don't think so, unless you fall into them.

15           We were pleased to get rid of liability,  
16 one by Oakland, because the local park agency decided they  
17 were going to make a motorcross out of it and it has  
18 worked very well for me.

19           But anyhow, the lead agency is where it all  
20 happens, and your staff did not interview the lead agency.  
21 I talked to four lead agencies that I work under. These

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22 agencies administer SMARA. They're it. They inspect you.

23 They charge you fees. You comply with their conditions.

24 They're the ones that approve the reclamation plans,

25 provide the EIRs and everything. I talked to three of

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1 them. They never heard of what you guys are doing. How  
2 come? Because they're the same ones who are going to  
3 enforce whatever you come up with, but they don't know  
4 what's going on. I find that appalling.

5           One of the things says there's no  
6 monitoring effects after you're done with the reclamation  
7 plan. Well, with mitigation monitoring, in many cases it  
8 goes on 15 years after you leave. At one facility we're  
9 dedicating land, including slopes and backfills, to a  
10 water agency. We must guarantee those slopes for 10 years  
11 after they accept it. That's well after we're done  
12 mining. Mitigation monitoring is a requirement of the  
13 State. Mitigation monitoring means you continue to  
14 monitor whatever mitigation you do.

15           Each lead agency has its own mining  
16 ordinance. They're required to have it. Their mining  
17 ordinance is much tougher than anything the State came up  
18 with. None of this was pointed out in the staff report.

19           I'll close by reading some excerpts from  
20 the letter. The activities that I question as far as our  
21 particular operations are concerned, and I can't speak for

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22 all producers. They are crushing broken asphalt, broken  
23 concrete, water closets and other materials to manufacture  
24 road base. This comes out of recycling. Slope  
25 stabilization and protection -- and that's when you have a

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1 high groundwater table and want to stop the wave action  
2 effect, I would call that a beneficial use.

3           Capping of settling ponds, when you have  
4 settling ponds, usually they cease -- when you cease, the  
5 settling ponds are never to the top, and you have to have  
6 three boards saying six or eight feet, but you want to  
7 fill it with something that will bridge it which is  
8 rubble. We have our main headquarters office, our main  
9 shops built on 30-foot deep pond with five feet of rubble  
10 fill. Can you use the land? You betcha. We're doing it.

11           Filling of the pits, some places the  
12 filling is to grade by import of materials is required by  
13 the reclamation plan as designed. Now you're going to  
14 make us into -- somebody has to find devious ways to get  
15 this material so we don't come under your regulation.  
16 Dirt used to fill pits, that's going to come under your  
17 regulation. Right now we take dirt from excess excavation  
18 and construction sites. We don't charge them for it.  
19 They bring it in and we use and put it someplace in our  
20 facility. We take expansion soil from construction sites  
21 that can't be under house slabs.

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22           The epitome to me and the paradigm of  
23 ridiculousness would be we also have overburden. In some  
24 cases we have 30 feet of dirt that we have to remove to  
25 get to the gravel. We take that dirt and we move it to

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1 another portion of the property. Is that landfill?

2 According to your definition, you bet. So now we're  
3 supposed to pay you \$1.34 a ton for stripping from one  
4 side to another. It doesn't make a lot of sense to me.

5 Now, I searched the regulations for the  
6 items I mentioned, those five items. I find recycling  
7 apparently is excluded by Section 17381.1(d), but even  
8 that exclusion is not clear because there's all kinds of  
9 qualifications that goes along with it. Why not say it's  
10 excluded? Period. Get done with it. Slope stabilization  
11 may or may not be excluded by Section 17381.1(e)(1)  
12 because it sort of refers to Caltrans and public agencies,  
13 then says well, maybe you can do it under similar  
14 construction plan, whatever that is. Capping mud ponds  
15 apparently is going to be under the jurisdiction of this  
16 regulation.

17 That's about all I've got that I want to  
18 read other than the lead agencies have to be consulted in  
19 this regulation, absolutely have to. Otherwise  
20 (inaudible). SMARA, the Department of Conservation does  
21 not administer these things, it's the lead agencies.

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22 Thank you.

23 CHAIRMAN EATON: Any questions of

24 Mr. Appleton?

25 I have one. You said you had a definition

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1 that's narrower than our Type A.

2 MR. APPLETON: No, no. I said I don't

3 agree with your wood ashes in Type A and petroleum soil in

4 Type A.

5 CHAIRMAN EATON: So you're saying they

6 should be included or should not be included?

7 MR. APPLETON: I would not include it.

8 CHAIRMAN EATON: So that's narrower.

9 MR. APPLETON: Yes.

10 CHAIRMAN EATON: That's what I'm trying to

11 get to. You would ask for a narrower definition as

12 related to Type A.

13 MR. APPLETON: I would not take either of

14 those materials in my landfills.

15 CHAIRMAN EATON: Mr. Chuck White.

16 Thank you.

17 MR. WHITE: Thank you, Mr. Chairman,

18 Members of the Board. Chuck White with Waste Management.

19 I do have a few handouts, and don't be too

20 frightened over the binders here. I'll try to go over it

21 very quickly. My apologies to those in the audience. I

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22 don't have enough to go around to everybody, but in the

23 interest of time, I'm not going to try to use the

24 overhead.

25 CHAIRMAN EATON: And I know these are going

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1 to be recycled; right?

2 MR. WHITE: Absolutely.

3 CHAIRMAN EATON: We'll give them back to

4 you; all right?

5 MR. WHITE: I'll be happy to take them back

6 after you read them.

7 The focus of my presentation, which I'll

8 make as brief as possible, is a minor problem that we have

9 or maybe not so minor from our standpoint, is the fact

10 that we've been assessed a fee by the Board of

11 Equalization for our sole facility that handles inert

12 materials in Los Angeles County the New Way Mine

13 Reclamation facility. And I really want to focus on this

14 issue to see if I can get your help in trying to resolve

15 this issue and try to give you our perspective as to why

16 we don't think that this facility should be subject to

17 this fee, certainly not subject to a retroactive

18 application of this fee.

19 Behind Tab Number 1, I've given a brief

20 summary of the New Way Landfill. It is an inactive former

21 sand and gravel quarry located in West Irwindale. It can

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22 only receive inert materials that will provide a compacted

23 and certified engineer fill to allow for future land use.

24 The intent of this site is to return it to use as an

25 industrial park once the pit is filled.

1           It has waste discharge requirements that  
2 allow only inert materials. Irwindale has a Conditional  
3 Use Permit and an Environmental Impact Report. We have a  
4 Solid Waste Facility Permit, which I'll get to in a  
5 second. The key to this page is the kind of materials we  
6 can receive is only clean earth and inorganic solid fill  
7 material like broken concrete and asphalt, uncontaminated  
8 soil, broken concrete, broken asphalt, aggregate mining  
9 waste, bricks. That's it.

10           There's a huge list of prohibited  
11 materials. We can only take the cleanest of clean inert  
12 materials into this pit for purposes of mine reclamation,  
13 for reclaiming this former gravel pit and returning it to  
14 productive use.

15           We thought we were basically going along,  
16 doing the right thing, until we received a behind the Tab  
17 Number 2 in about, I guess it was March of this year, a  
18 notice from the Board of Equalization that we've been  
19 identified by the Waste Board as one of three facilities  
20 in the San Gabriel basin that appear to be solid waste  
21 landfills and are subject to this tipping fee. And in

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22 fact, here's the most recent bill that we got for over \$3  
23 million, of which \$2.5 million is actual fees and the  
24 reminder was penalties. And we were notified if we didn't  
25 pay the basic fee by the 18th of this month, we're going

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1 to be subject to another quarter million dollars in  
2 penalties. So we wrote a check for \$2.5 million under  
3 protest and indicated we don't believe we're subject to  
4 this fee, but we're going to certainly play your game.  
5 But we have filed a Notice of Redetermination with the  
6 Board of Equalization.

7           The whole reason that we seem to be in this  
8 position with the Board of Equalization is right after  
9 that reform is a memo that went from Ralph Chandler to the  
10 Board of Equalization identifying the New Way facility,  
11 along with two other facilities in the San Gabriel basin,  
12 as being solid waste landfills. And the reason it's  
13 important for these regulations, I've highlighted that  
14 sentence.

15           The disposal facilities were subject to IWM  
16 fee was highlighted during the California Integrated Waste  
17 Management Board's permitting construction-demolition  
18 debris processing and disposal facilities. That kind of  
19 caught us by surprise because we thought the whole time  
20 that everything was going along, and the development  
21 regulations that would say mine reclamation facilities

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22 were outside the scope of the Board's jurisdiction and

23 certainly wouldn't be subject to disposal fees. So we

24 were somewhat shocked and surprised to see this.

25 That forced us to go back. Wait a minute.



1 Did we miss the boat entirely on this thing? Why would  
2 this not be regulated as a solid waste landfill? If you  
3 turn to the next tab, Tab Number 3 it gives the basic  
4 provisions of the Fee Code that we could be applicable to  
5 this facility. 48000 talks about each operator of a  
6 disposal facility shall pay a fee for each amount of waste  
7 that is solid waste that is disposed at each disposal  
8 site. But there's also a provision, 44087, that talks  
9 about inert waste removed from the waste stream and not  
10 disposed in a solid waste landfill -- not disposed in a  
11 solid waste landfill -- shall not be included for purposes  
12 of assessing fees imposed pursuant to this section.

13           So the question in our minds is gee, have  
14 we really been operating a solid waste landfill all this  
15 time and didn't know it? We don't think so. We don't  
16 think this is a solid waste landfill. We think it is a  
17 mine reclamation facility. Let me go on.

18           The Board first got into its various tiered  
19 permitting operations, and this will be on Tab 4, with  
20 this determination on non-traditional facilities. We have  
21 relied over the years on a number of statements and

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22 guidance that we received from the Board and this is only  
23 one, but basically we believe that each of these guidances  
24 that I'm going to very briefly point out to you have  
25 substantiated the fact this is not a solid waste landfill,

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1 or this kind of activity is not a solid waste landfill and  
2 has never been viewed as a solid waste landfill.

3           Of course, the purpose of this  
4 non-traditional LEA advisory was to advise LEAs to hold  
5 off on regulating facilities that are of non-traditional,  
6 non-municipal solid waste until such time as the rules are  
7 in place to clearly say who's regulated, who's not  
8 regulated, who should be in which category or not.

9           We clearly aren't at that point yet on  
10 these kinds of facilities, and in fact, inert  
11 facilities -- you'll see from the next page -- are  
12 specifically identified as one of the included waste types  
13 in this non-traditional.

14           The landfilling of inert waste as clearly  
15 identified as to hold off, don't regulate these, and don't  
16 impose any burden on these facilities until we decide to  
17 where to slot them into the regulatory tiers. We haven't  
18 gotten that place yet.

19           We also are aware of an action that was  
20 taken by the Board of Equalization on a very similar kind  
21 of facility that is identified under Tab Number 5. This

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22 is the Brandpark Landfill (phonetic) that's operated by  
23 the City of Glendale in the City of Glendale. It operates  
24 virtually the same way as our New Way facility in  
25 Irwindale. It handles exactly same kind of materials for

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1 purposes of reclaiming an old mine site. Yet in this case  
2 the Board of Equalization has written to them back in 1994  
3 that this facility should not pay the BOE because it's no  
4 longer considered a solid waste landfill.

5           Why was it no longer considered a solid  
6 waste landfill? Because the Board wrote a letter, which  
7 was then forwarded on to the BOE, that clearly documents  
8 it was not a solid waste landfill. And the solid waste  
9 landfill definition that was in place at the time this  
10 letter was written was the definition of solid waste  
11 landfill that applied to the entire statute, including the  
12 imposition of solid waste fees. So you have a very  
13 similar operation that has been exempted from paying the  
14 fees since 1994 to this day, yet at the same time we seem  
15 to be subject to for operating exactly the same kind of  
16 facility as potentially being subject to the fee.

17           CHAIRMAN EATON: Do they have the same  
18 volume that you have?

19           MR. WHITE: They have a smaller operation.  
20 There's no question about that.

21           CHAIRMAN EATON: Did they go through the

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22 process of the exemption?

23 MR. WHITE: Well, they basically --

24 CHAIRMAN EATON: I don't know. My

25 understand is that -- and I wasn't here, so that's why I'm

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1 trying to reconcile a point that my understanding is these  
2 types of facilities have gone through a process, applied  
3 for an exemption, that they were verified and therefore  
4 were exempt. I don't know if that's the case. I don't  
5 know if our staff knows or not.

6 MR. WHITE: It is a very similar kind of  
7 permit as a solid waste permit, as I understand. It says  
8 it's not a solid waste landfill, for example, for closure  
9 and post-closure. I understand the Brandpark Landfill was  
10 once a Class 3 landfill, and it was determined that it  
11 really no longer needed to be a Class 3 landfill and then  
12 was moved into an unclassified unit by the Regional Water  
13 Quality Control Board. So it's never been a Class 3  
14 landfill. It's always been an unclassified unit.

15 CHAIRMAN EATON: I just want to find out.  
16 Mitch.

17 MR. WEISS: Mitch Weiss, Administration and  
18 Finance Division.

19 After we were notified of this, the Board  
20 sent a letter to the Board of Equalization identifying the  
21 Brandpark Landfill as a facility that should pay the fee.

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22 CHAIRMAN EATON: See, it did come full

23 circle.

24 (Laughter)

25 CHAIRMAN EATON: All right. Moving right

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1 along.

2 MR. WHITE: The next section is the Section  
3 Number 6.

4 CHAIRMAN EATON: See, now there's four.  
5 (Laughter)

6 MR. WHITE: The City of Irwindale did  
7 issue a Conditional Use Permit. We went through an  
8 Environmental Impact Report describing that nowhere does  
9 this mention this is a solid waste landfill. It's totally  
10 mentioning it as a mine reclamation facility to restore  
11 and fill a depleted gravel pit. Except excerpting some  
12 sections from it, we have a very detailed Conditional Use  
13 Permit that requires it to be filled, supervised by an  
14 engineer. We pay a fee to the City of Irwindale for them  
15 to send out engineers to review the filling operation and  
16 make sure it's not -- it's compacted to the appropriate  
17 density for purposes of the ultimate restoration and  
18 reclamation of this mine site.

19 We have a Solid Waste Facility Permit that  
20 was issued by the Board, by the LEA, in 1996. This was  
21 issued -- this was really an irony here. Why was the

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22 Solid Waste Permit issued? It was actually issued because

23 -- for exactly the same reason this is one of the cleanest

24 mine reclamation facilities in the state, taking only very

25 limited amounts of very clean material. Why is that?

1 Because it's in the San Gabriel basin. The whole San  
2 Gabriel basin is a Superfund site. Everybody is looking  
3 over every activity in the San Gabriel basin. There are  
4 no further contamination problems of ground water. So we  
5 have the Water Master, we have the Water Board, we have  
6 the City of Irwindale wanting to make sure that there's  
7 nothing that goes into this pit that would possibly impact  
8 water quality.

9           The Water Master at the time requested that  
10 Richard Hanson issue a Solid Waste Facility Permit. We  
11 had no objection to getting a Solid Waste Facility Permit.  
12 There's lots of facilities that aren't disposal facilities  
13 that have Solid Waste Permits. And in fact, this permit  
14 does not have the box checked for landfill disposal site.

15           In fact, as you'll see, it's checked for  
16 other inert landfill and in the staff report that  
17 accompanied it, back on page 5 of that, it basically makes  
18 the clear statement this facility is not a solid waste  
19 landfill. And the only definition that was in place at  
20 that time the statement was made was the broader  
21 definition of solid waste landfill that applied to -- if

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22 it's not a solid waste landfill for purposes of closure  
23 and post-closure maintenance plans, it's also not a solid  
24 waste landfill as that term is used for the purpose of  
25 paying fees.

1           Tab Number 8 is basically the resolution  
2 that you adopted in November of '97, which we talked about  
3 earlier today. And we believe that -- and I'll just  
4 briefly reiterate it -- states exactly the same reason.  
5 How can this be a solid waste landfill if it's a mine  
6 reclamation facility that the Waste Board says they did  
7 not have jurisdiction over the use of construction and  
8 inert debris? Which is exactly what we're doing. We  
9 don't believe it could be a landfill from this standpoint.

10           Number 9 shows some of the earlier tables  
11 that were used in the development of these regulations  
12 clear through to April of this year. You clearly indicate  
13 there's three types of C&D fills. There's the full blown  
14 Solid Waste Permit C&D fill, there would be an inert waste  
15 disposal site in the registration tier, and mine  
16 reclamation -- mine reclamation would be totally out of  
17 the system. And we relied on this as another indication  
18 that we were operating something that was going to be  
19 exempted from the Board's regulation and certainly  
20 wouldn't be subject to the fee.

21           Finally after the last tab, your SWIS

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22 system indicates that there are -- Solid Waste Information

23 System -- that there are 19 facilities in your system that

24 are identified as being inert facilities, six of them that

25 are fully permitted, one of which is the tire disposal

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1 facility that we operate. We pay fees on that.

2           The other five are in various categories.

3 Three of them are the three that were identified, one was

4 the Brandpark Landfill, and one is a landfill in Northern

5 California that uses inert materials to shore up berms for

6 supporting the solid waste disposal activities. But

7 there's another eight that are exempt, there's another

8 four that are unpermitted, and there's one that's

9 excluded. This is on your own system here for throughout

10 the state.

11           But we know, for example, from the Water

12 Board system that there's 40 some-odd facilities that are

13 identified by the Water Board's system that are

14 unclassified inert disposal sites. They're around the

15 state. There are probably 80 facilities that have both

16 SWIS numbers and are on the system being identified by the

17 Mine Reclamation Board, and we know there's probably a

18 thousand or more mine reclamation sites. And the concern

19 that we have is the actions that have been taken so far

20 have identified those facilities for payment of this fee

21 that are clear over to the left of your Type A. They're

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22 the cleanest facilities that are out there, that are  
23 taking the cleanest kind of materials. And we would ask  
24 the Board, as you move forward in this, to please help us  
25 clarify with the Board of Equalization and not send

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1 additional letters saying that more fees are due, that  
2 this operation shouldn't be subject to fees.

3           We're willing to work with the Board on a  
4 go-forward basis, as I mentioned during Item Number 4, but  
5 the problem we have is the inequity issue of these few  
6 facilities being subject to these fees retroactively when  
7 there was never any intent, no one was paying these fees  
8 for clean inert materials application to mine reclamation  
9 facilities.

10           This is a departure from the way everybody  
11 has operated in the past. So we would urge to you help us  
12 on a go-forward basis. We're willing to talk, but this  
13 inequitable retroactive application of this fee is  
14 patently unfair.

15           CHAIRMAN EATON: Any questions of  
16 Mr. White? Comments, staff?

17           BOARD MEMBER JONES: I just have one, a  
18 couple for Mr. White. I have a tendency to agree with you  
19 on a few of these things. If you look at our tiered  
20 permitting process all the way through, we dealt with  
21 state minimum of standards. That's what this whole

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22 process has been be about, proper amount of environmental  
23 protection, until we got to this issue. And the issue  
24 changed for this Board because then it dealt with fees and  
25 diversion credit. That didn't happen here. That happened

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1 out there.

2 And, you know, you want us to fix this  
3 thing. Generally, I don't think I have a problem with  
4 trying to fix it and I don't think anybody on this Board  
5 does, but you've got to keep in context we didn't change  
6 the argument. None of us changed the argument up here.  
7 The argument got changed out there.

8 So we're not dealing so much with statement  
9 of state minimum standards as we are with policy issues  
10 surrounding a 6,000-ton-a-day site that could bring in  
11 dirt to fill up a hole and give out diversion credit to  
12 cities and counties. And that got us -- got me going down  
13 the wrong road. Your partner, Mr. Stoddard, and I have  
14 had this discussion from day one that there was no way  
15 this could be considered. Number one, it wasn't part of  
16 the original waste stream that got counted.

17 Keep in the back of your mind we didn't  
18 create these issues. I don't think anybody tried to do  
19 anything other than look at state minimum standards, until  
20 the argument changed. And now we're more reactive than we  
21 are policy making. We're trying to include a bigger

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22 universe than just state minimum standards.

23           Clearly I haven't heard anybody in this

24 room say that there is a difference between what we've

25 determined to be Inert A and Inert B and C&D, that they

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1 understand that there's a difference there. And that's  
2 where we were originally going with state minimum  
3 standards, to try to find out the appropriate level of  
4 environmental protection, and then it got changed.

5           So we've got to work through all these  
6 issues at the same time, but it definitely makes it murky.

7           MR. WHITE: We were surprised too,  
8 Mr. Jones. We were going along working on the  
9 regulations, figuring that there would be some regulatory  
10 structure in place on a go-forward basis at some point in  
11 time. And it was when this notice from the Board of  
12 Equalization came out of the blue and landed on our laps  
13 that we realized what is going on here. How did this  
14 happen and why would this kind of facility that we believe  
15 is over -- we take this chart. The kind of operation  
16 we're talking about here is off the side of this chart in  
17 terms of the materials that are listed here. It's not  
18 even a Type A. It's cleaner than the material in the Type  
19 A, yet it's been targeted for paying a disposal fee. And  
20 there's many other facilities, presumably, that are out  
21 there that are taking many more kind of materials.

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22           We have a specific plan for returning this  
23 site to productive use as a mine reclamation facility.  
24 Nobody -- anywhere in the process, when we were going  
25 through permitting, even up to this Board suggested we

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1 were a solid waste landfill subject to paying the fees.

2 And the last time this Board saw it was in '96. If there

3 was a concern, why weren't those issues raised at that

4 point in time? They've never been raised, and the only

5 history that we ever saw until this Brandpark one that

6 indicated these kind of operations are not subject to

7 disposal fees because everybody in their wisdom believed

8 that these were some other kind of activity.

9 We don't mind being regulated by the Board.

10 We didn't argue to not get the permit in '96, the Solid

11 Waste Facility Permit. We're willing to be regulated by

12 the Board, we just don't want to be regulated as a solid

13 waste landfill. If the Board or LEAs believe there's a

14 need to take a look at the material that's coming in to

15 ensure that it meets certain standards and it doesn't

16 include organic materials, that's fine with us. But once

17 it meets the standard and goes in for mine reclamation,

18 it's not disposal. It's mine reclamation.

19 That's part of the problem we have here.

20 You have, for example, a disposal accounting system that

21 calls it either land filling or diversion. There needs to

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22 probably be a third category talking about mine

23 reclamation that should be off the table as neither

24 disposal or diversion, just simply inerts from mine

25 reclamation and it doesn't count one way or the other.

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1           But the system does not provide for that  
2 now. We need to work together to develop a system, but a  
3 \$2.5 million dollar check we had to write a week and a  
4 half ago, we're going to talk about serious money that got  
5 a few hearts in our company palpitating as to why in the  
6 world are we being singled out to pay this very  
7 inequitable fee. And we're willing to sit down and talk  
8 to the Board about fees or other kinds of regulatory  
9 requirements on a go-forward basis. Go forward.

10           CHAIRMAN EATON: Senator Roberti and  
11 Mr. Pennington, and I believe staff had a question.

12           BOARD MEMBER ROBERTI: Mr. Chairman, I  
13 would like to make a point as to what my personal thinking  
14 is on the matter. I do feel in deference to the witness  
15 that the regulations of this Board in the past have been  
16 vague in this area. In fact, a reasonable party could  
17 have been led to believe that they were not considered a  
18 landfill by communications that they received.

19           Having said that, I am also, however, very  
20 much concerned about the future in where we go from here,  
21 and I don't think past vagueness should deter us from the

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22 health and safety considerations, the geologic stability  
23 considerations that have to be paramount in our  
24 deliberations. There must be some way out of the grass  
25 where we can find some equity for people who appear to

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1 have operated in good faith, didn't charge the excess  
2 money because they didn't think they had to, and now are  
3 stuck with the bill.

4 But as the witness knows, that's the Board  
5 of Equalization determination. It is not our  
6 determination. Our determination is really what we do in  
7 the future as far as regulations are concerned or what the  
8 duty of this Board is. I simply have to think that the  
9 Board of Equalization, based on our own findings or our  
10 own appraisal of them of the vagueness at best of past  
11 regulations, caused the Board of Equalization to alter  
12 their assessment.

13 As you know, we can't -- we can't. The  
14 only thing we could do is probably pass a regulation for  
15 now and for all time, jeopardizing our own role in this  
16 Board as to what future considerations have to be. Maybe  
17 counsel could help us.

18 MR. WHITE: If I could briefly respond.  
19 Our recommendation and suggestion to the Board is because  
20 we -- we would argue that the record is replete with  
21 evidence that you've never chosen to regulate these as

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22 solid waste landfills. That doesn't say you're forever

23 precluded from regulating it as a solid waste landfill,

24 you just haven't chosen to up to this point.

25 BOARD MEMBER ROBERTI: It's one of those.

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1           MR. WHITE: If you decide to go forward and  
2 regulate these as solid waste landfills, then the fee  
3 would be due at that point in time. We may argue that's  
4 not appropriate, but --

5           BOARD MEMBER ROBERTI: That's a different  
6 issue.

7           MR. WHITE: But that's a different issue.  
8 The point is if could you just acknowledge, for whatever  
9 reason, confusion or uncertainty or you hadn't finished  
10 the rulemaking process, you've never chosen to regulate  
11 these as solid waste landfills and give that message to  
12 the Board of Equalization, and then the Board of  
13 Equalization would say you're right, these were never  
14 regulated solid waste landfills. There seems to be some  
15 evidence to that effect from the Board. Let us know if  
16 you ever decide to regulate these as solid waste landfills  
17 and we'll come back with a go-forward fee at that point in  
18 time.

19           MS. TOBIAS: Mr. Chairman, Senator Roberti  
20 remarked. I would like to put in a response to a couple  
21 of things that Mr. White has raised. I'm not sure that

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22 they're going to help in the sense that I think to a  
23 certain extent the information is a little bit different  
24 than Mr. White has portrayed it, but I do think it's  
25 important to get it on the record and I've asked

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1 Ms. Borzelleri to kind of walk you through it.

2 MS. BORZELLERI: We actually had a handout  
3 in the back of the room. It was a fact sheet on inert  
4 disposal facilities that staff had put together in  
5 response to Mr. White's issues.

6 BOARD MEMBER PENNINGTON: It was actually  
7 put together on my request.

8 MS. BORZELLERI: Yes. Mr. Pennington had  
9 requested that we respond to Mr. White's questions. Thank  
10 you.

11 MS. TOBIAS: Does everybody have it?

12 CHAIRMAN EATON: We're trying to go  
13 paperless.

14 MS. TOBIAS: It says, "Inert Fact Sheet."

15 CHAIRMAN EATON: Thank you, Ms. Borzelleri.

16 MS. BORZELLERI: Mitch addressed the issue  
17 of the Brandpark Landfill by stating that we have gone  
18 back and asked the BOE to go ahead and charge them fees.  
19 I think where this originated is there was a section, an  
20 old section that is now obsolete, in the Public Resources  
21 Code 46027, which was placed in the closure post-closure

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22 portion of the PRC at the time. That section defines  
23 solid waste landfill to include only Class 3 facilities  
24 as designated by the Water Board. That provision was  
25 repealed in 1990.



1           There is some confusion. Because of this  
2 whole issue of what we're regulating and non-traditional  
3 facilities, we had sort of set some things aside as far as  
4 inert facilities and C&D facilities because we knew we  
5 were going to regulate that aspect of it.

6           So we were not necessarily requiring  
7 closure post-closure plans for those facilities. The  
8 staff has continued to say that these facilities are not  
9 facilities for purposes of closure post-closure, not that  
10 they were not solid waste landfills.

11          The definition of solid waste landfill  
12 today and in 1990 is in Section 40195.1. It does not  
13 designate solid waste landfills as Class 3 landfills as  
14 determined by the Regional Board. So we would, at this  
15 point, say that these facilities do fall into the  
16 definition of solid waste landfill.

17          BOARD MEMBER ROBERTI: For what purpose  
18 again?

19          MS. BORZELLERI: Well, for all purposes.  
20 However, we had not been applying the closure post-closure  
21 requirements of them.

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22 BOARD MEMBER ROBERTI: Because under a

23 different section they don't fall under closure

24 post-closure?

25 MS. BORZELLERI: Actually, they did not

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1 used to fall under that old section. But since that  
2 section was repealed, I guess arguably you could say they  
3 fall under that, but we have not required it of them  
4 because we were waiting to get the --

5 BOARD MEMBER ROBERTI: What year was that  
6 section repealed?

7 MS. BORZELLERI: 1990.

8 BOARD MEMBER ROBERTI: So in 1990, you're  
9 saying that the former two definitions of what were a  
10 solid waste landfill now became one definition and one  
11 sort of void.

12 MS. BORZELLERI: Yes.

13 BOARD MEMBER ROBERTI: Does the Board of  
14 Equalization assessment of these landfills date back to  
15 1990 or prior to that.

16 MS. BORZELLERI: No, it doesn't. This  
17 landfill was not permitted until 1996, and according to  
18 the way BOE assesses fees, it would be a permitted  
19 disposal facility.

20 MR. WHITE: My comment to that is when the  
21 Board took action to concur on the permit, the staff said

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22 you don't have to do closure and post-closure because it's  
23 not a solid waste landfill. The only definition that was  
24 in the Public Resources Code at that time was 40195.1,  
25 which was a definition of solid waste landfill that

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1 applied across the board to the entire chapter.

2 BOARD MEMBER ROBERTI: Does that repeal the  
3 1990?

4 MR. WHITE: No. It was in place in 1990,  
5 actually put in place in 1993 with AB 1220. And all these  
6 times these actions were taken to whether things were or  
7 were not solid waste landfills, this is the definition,  
8 and applied to the entire Code.

9 Our point is you cannot say it's not a  
10 solid waste landfill for one purpose but suddenly had to  
11 be a solid waste landfill for another purpose. It's  
12 either a solid waste landfill or it's not a solid waste  
13 landfill because the definition of solid waste landfill at  
14 the time the permit was issued was across the entire Code.  
15 If it's not a solid waste landfill for closure  
16 post-closure, it can't be a solid waste landfill for  
17 purposes of charging the fees.

18 BOARD MEMBER ROBERTI: Do we recognize --

19 MR. WHITE: The Board can't at some point  
20 in time in the future say it's a solid waste landfill. We  
21 reviewed it. We realize it might be a solid waste

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22 landfill, but on a go-forward basis across the board to

23 all similar kinds of operations.

24 BOARD MEMBER ROBERTI: Do we recognize that

25 this 1993 definition took hold for across-the-board

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1 purposes? The witness is now offering a third definition  
2 which appears to have been passed in 1993. So from 1990  
3 to 1993, we had definition A and then the void area. Now  
4 in 1993, we come up with something new. How comprehensive  
5 was that new definition?

6 MS. TOBIAS: Can I suggest, Senator  
7 Roberti, that this is -- I don't know how helpful it's  
8 going to be to debate this. What we had was a fact sheet  
9 which Board Member Pennington asked to us develop, and I  
10 think it is helpful to get Mr. White's rejoinder to that.

11 But what maybe would be helpful is we could  
12 basically finish doing the fact sheet and then we'll  
13 continue to work on what Mr. White's done. I'll work on  
14 that while Deborah is going through the fact sheet. It's  
15 hard to go through this and go back and see what he's  
16 doing (inaudible).

17 BOARD MEMBER ROBERTI: That's fine with one  
18 proviso. With this really complex mish-mash of  
19 definitions, some of which are statutory, I guess all of  
20 which are statutory, it does strike me that the equities  
21 are on the side of the entities being assessed as far as

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22 the retroactivity of the application as far as staff is

23 concerned.

24           And I'm little bit concerned -- did we send

25 an advice letter to the Board of Equalization that they

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1 should tax or that they were a solid waste landfill?

2 There is a difference, obviously, because there's so many

3 definitions. I would be a little unhappy if we sent a

4 definition to the Board of Equalization that the fee

5 should be assessed. That's not our business. To say that

6 they come within the purview of a -- one of a number of

7 definitions, that's something else again, but I would be

8 very interested in what the conclusion was in the letter

9 that was sent.

10 MR. WHITE: Well, the letter was sent -- we

11 believe what started the process was Mr. Chandler's letter

12 of December 11.

13 BOARD MEMBER ROBERTI: But now I understand

14 there's another letter that went to the --

15 MR. WHITE: That one, I didn't even know

16 that one existed.

17 BOARD MEMBER ROBERTI: What did that one

18 say?

19 CHAIRMAN EATON: I think we were going

20 through that. That was the next, I think, issue on the

21 fact sheet.

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22 BOARD MEMBER ROBERTI: What are the

23 letters? Where is the letter?

24 CHAIRMAN EATON: Issue number two.

25 MR. WEISS: I believe it's in the fact

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1 sheet Deborah has that in front of her.

2 CHAIRMAN EATON: It says --

3 MR. WEISS: It essentially said that the  
4 definition of solid waste landfill in 46027 specifically  
5 referred to just that chapter, which didn't include the  
6 fee payment.

7 MR. WHITE: But that was repealed in 1993,  
8 is the actual date of 12-20, and replaced in October of  
9 1993 with a broad definition that applied across the  
10 entire Code, not just the closure post-closure. Every  
11 decision that's been made or not made as to whether these  
12 are solid waste landfills has occurred after that switch  
13 in statute. So if you say in 1996 it's not a solid waste  
14 landfill, it's the definition that applies across the  
15 entire chapter.

16 And that's my point is well, there has not  
17 been consistent application across the board, and we've  
18 always suggested fix the regulatory framework and apply it  
19 uniformly across the board to all facilities and that  
20 would be fair. But to go in when you're in the midst of  
21 rulemaking -- that argument gets countered to the

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22 direction of the LEAs going back to 1994, is to hold off  
23 on regulatory determinations until we get the regulatory  
24 structure in place and then we'll go forward. But I have  
25 to say that Mr. Chandler's letter to the BOE changes that.

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1 It just sort of jumps the gun. You hadn't resolved how  
2 these things should be structured and tiered and are  
3 sending memos to the BOE before this structure is in place  
4 saying which clearly are or are not.

5           There's 1100 mine reclamation facilities in  
6 this state. Which one of those are going to be paying  
7 fees other than this kind of material?

8           BOARD MEMBER PENNINGTON: Mr. Chairman.

9           CHAIRMAN EATON: Mr. Pennington.

10          BOARD MEMBER PENNINGTON: Would it be  
11 possible for the Board to get a copy of the Chandler  
12 letter to the BOE?

13          CHAIRMAN EATON: The July 13th letter?

14          BOARD MEMBER PENNINGTON: Well, I would  
15 like the New Way and the Bran letter.

16          MR. WHITE: The New Way is in your packet  
17 behind Tab Number --

18          CHAIRMAN EATON: 5?

19          MR. WHITE: 2. It's the second piece of  
20 paper behind Tab Number 2. We never saw it until like in  
21 March of this year and we were frankly surprised, as were

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22 the operators and owners of the other two facilities.

23 BOARD MEMBER ROBERTI: Mr. Chairman.

24 BOARD MEMBER PENNINGTON: I'm sorry.

25 CHAIRMAN EATON: Mr. Pennington and Senator

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1 Roberti.

2 BOARD MEMBER PENNINGTON: I'm just trying  
3 to find the letter.

4 CHAIRMAN EATON: If you look right after  
5 the Board of Equalization, you will find that the next is  
6 file copy over the top. It's a memorandum, I believe,  
7 that it's addressed to Monte Williams, I believe.

8 BOARD MEMBER PENNINGTON: 12-11. Okay.  
9 And then the Bran letter, has anybody got  
10 that?

11 MR. WHITE: I've never seen that.

12 BOARD MEMBER PENNINGTON: I wonder if we  
13 could get a copy of that sometime.

14 CHAIRMAN EATON: While we're waiting for  
15 that, Senator Roberti.

16 BOARD MEMBER ROBERTI: Just to sort of  
17 emphasize or whatever, I think the Board should indicate  
18 clearly what its future policy is, and that is by and  
19 large these mind reclamation sites should be subject to  
20 permit. I don't see what the problem is, and maybe  
21 somebody can tell me what the legal impediment is, why we

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22 cannot indicate to the Board of Equalization that in the  
23 past, at best, things were vague. At worst, we indicated  
24 to the companies that owned these sites that they were not  
25 subject to taxation.

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1 I think the truth lies somewhere in between  
2 vagueness and a representation that they were not subject  
3 to taxation, and that it would be our strongest  
4 recommendation, based on our own advice, that they not be  
5 subject to the tax -- rather the fee.

6 CHAIRMAN EATON: We had many less complex  
7 opinions as to whether or not to attach a fee and I do  
8 believe it is a fee.

9 BOARD MEMBER ROBERTI: I mean, now I know  
10 it may take some legal artfulness to draft this, we cannot  
11 alter the Board -- the Board of Equalization is five --  
12 are five independent people who actually vote on these  
13 things and we can't make that decision for them. They  
14 make their decisions based on the various advice positions  
15 that they get from various entities.

16 The best we can do is advise, just as we  
17 seem to advise the other way not so very long ago, but  
18 that's what I think we should do. I would be very askance  
19 at mixing the apples and oranges here and trying to make  
20 your case determine what we do in the future. As much as  
21 I feel that you have equity on your side for your narrow

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22 area, and I know we're talking about millions of dollars

23 for you is not narrow, but in terms of our future dealings

24 as far as the health and safety of the people of the state

25 of California, I don't want to mix the two.

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1           And I, by and large, favor the  
2 recommendations which our staff has given us as far as  
3 what future regulations in the area of inerts and mine  
4 reclamation sites entails. But for your narrow case, as  
5 far as advice letters in the past, I absolutely feel  
6 something can be done to at least give you relief to the  
7 extent that the Board of Equalization will know what our  
8 position is, and that the owners of these three sites  
9 operated from a reliance to their detriment as to what our  
10 advice at that time was.

11           CHAIRMAN EATON: Senator Roberti.

12           BOARD MEMBER ROBERTI: I don't think that's  
13 an insurmountable thing to do.

14           CHAIRMAN EATON: If I'm hearing -- go  
15 ahead, Mr. Pennington.

16           BOARD MEMBER PENNINGTON: I would just like  
17 to reflect that I certainly agree with the Senator, that  
18 anything -- any action we might take to notify the BOE of  
19 our belief, we certainly should include these other  
20 landfills in the letter, and I guess this Brand one, so  
21 that we're -- because we're going to get the same argument

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22 from the other three.

23 CHAIRMAN EATON: I guess the true issue

24 really is, here, is basically that whether or not one

25 agree, three of them might differ as to whether or not

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1 some of these fees should have been assessed and at what  
2 point in time. You're asking for the relief from the fee.  
3 At the same time -- you know I'm a person who is pretty  
4 much straightforward.

5           We all know that the real issue, at least  
6 as it relates to us, is basically whether or not this is  
7 going to constitute diversion in counting purposes for  
8 some of those. I think that one of the key components, at  
9 least for this Board, irrespective of the fee, although  
10 they're somehow joined together, I don't think they're  
11 exactly mutually exclusive.

12           At the same time, the definition of inerts  
13 becomes critical in the sense of moving forward, as you  
14 had said, Chuck, because that becomes a key component for  
15 regulatory structure. And I think that's where I'm  
16 looking at is how do you frame that so you don't actually  
17 prejudice any movement forward or non-movement. That  
18 could be the case.

19           I also believe -- and I have had  
20 discussions. I think everyone has had discussions with  
21 individuals whether or not this issue should be done

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22 administratively or done statutorily. I just don't know.

23 But I think, if I hear what the Senator is

24 saying, is that initially without -- we haven't heard all

25 of the testimony of these issues, at least instructing our

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1 staff to inform the BOE of where our minds have differed  
2 and may be something of the past. And I believe, if I  
3 heard you correctly, Senator, was to not see what could be  
4 done to provide relief on the imposition of this fee, if  
5 I'm not mistaken.

6 I don't know if that satisfies what you  
7 guys are looking for, and I understand that completely. I  
8 think you may have to do other things as well, but I want  
9 to make sure, at least the Senator, if that's where he was  
10 going.

11 MR. STODDARD: Ken Stoddard with Waste  
12 Management. If I could comment just briefly.

13 We understand stuff happens. And these --  
14 if you go to the Code and start looking at the  
15 definitions, people on good faith can come to very  
16 different conclusions about what definitions those mean.  
17 We've had a similar problem in the hazardous waste arena  
18 for a decade or more, and in some cases it's taken five or  
19 ten years to resolve what are these problems through the  
20 Board of Equalization.

21 RP problems should not drive your

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22 regulatory decisions. We completely agree with Senator

23 Roberti. Drive a wedge between those issues. The

24 appropriate level of regulation for our type of facility

25 is totally separate from whether or not we need relief

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1 from the fees that we were imposed. What I would ask  
2 is -- we took a big hit. We paid \$2.5 million, but even  
3 the bigger problem is we have no idea where we stand  
4 today. Are we supposed to be collecting this fee? Are  
5 the other facilities that also received those  
6 notifications supposed to be collecting the fee? If so,  
7 some of these facilities are not viable facilities. If  
8 you add \$1.34 to the \$2.50, it's \$3.34. And in some  
9 cases, for \$1.00 a ton you can get rid of the same  
10 material for alternative daily cover at a solid waste  
11 landfill.

12           So something needs to be done and it needs  
13 to be done quickly. I don't think it's any secret. We've  
14 looked at legislative remedies. We've worked closely with  
15 the environmental organizations, cities, our fellow  
16 industry representatives, to try to come up with something  
17 that is extremely narrow to the type of waste, the super  
18 clean inerts, the inert inerts that Senator Roberti was  
19 talking about, that has no implications on diversion, that  
20 doesn't upset any other aspect of the regulatory program  
21 or the AB 939 program, but grant statutorily some

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22 immediate clarity as to whether or not these fees are

23 applicable to inert mine reclamation facilities.

24 CHAIRMAN EATON: But do you think that that

25 prejudices? Because the way the language was written, it

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1 says it's clarification of existing law. And that's

2 really the debate that's going on. I think I heard --

3 MR. STODDARD: Only for fee purposes.

4 CHAIRMAN EATON: Right. That would

5 prejudice in the future then, would it not, to be able to

6 go after the fee if we decide in the regulatory scheme.

7 MR. STODDARD: You will have to decide what

8 you think is appropriate long-term. We are completely

9 flexible in looking at that issue.

10 CHAIRMAN EATON: I understand, but that

11 wasn't my question. The question -- and I saw the

12 language that says clarification of existing law. If

13 that's the case, then if we ever come up with the

14 statutory scheme and go through and try and assess some

15 degree of fee that matches, as we have all discussed the

16 operations, or commensurate with the amount of oversight

17 inspection regulatory scheme, what have you, then our

18 hurdle becomes even bigger in the sense that we now have

19 to overcome something in the past. And I don't think

20 that's -- that's inequitable as well.

21 I think you raised the argument, how do we

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22 settle the issue of retroactive fee application to provide  
23 immediate relief. If that's solved, then what you are  
24 left with, then, is everybody everyone being back on the  
25 same level and starting to move forward, as Chuck said,

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1 but with no prejudice with regard to future fees or  
2 diversion or any of those other kinds of things. And I  
3 think that's where the statutory language.

4 MR. STODDARD: I do think at some point you  
5 are back in the legislature, particularly if you're trying  
6 to come up with some kind of fee that's proportionate to  
7 the economic activity, probably not \$1.34, \$2.50 activity.  
8 So I think it's completely without prejudice. I think  
9 it's also no secret we tried to work with Senator Chesbro  
10 who we think certainly is in the position to make the  
11 commitments to the Board about how he will deal with this  
12 issue, both at present and in the future.

13 I don't think it's that difficult to work  
14 out, and I would just stress the urgency of the problem.  
15 It affects us in a very big way, but it affects everybody  
16 who is operating an inert facility who is waiting for the  
17 other shoe to drop and to get a huge assessment indicating  
18 that they owe millions of dollars for past disposal fees,  
19 and this just has to be fixed.

20 BOARD MEMBER JONES: Mr. Chairman.

21 CHAIRMAN EATON: Mr. Jones.

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22 BOARD MEMBER JONES: One of the things -- I  
23 don't have any problem with trying to fix something. We  
24 have three facilities here. What triggered this is that  
25 they have SWIS numbers. Waste Management has been pretty

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1 clear about what is the waste stream they accept. I'm not  
2 sure that I heard from Peck Road or Reliance what their  
3 waste stream was there, and I don't know if it falls under  
4 the exact same strip category as yours.

5 MR. WHITE: It's virtually the same, but  
6 they can speak for themselves.

7 BOARD MEMBER JONES: That's going to be an  
8 issue for me. We're just arbitrarily saying we need to  
9 write BOE and say this was not -- this was driven because  
10 it had a SWIS number, so --

11 MR. WHITE: There's a lot -- Steve.

12 BOARD MEMBER JONES: I don't have a problem  
13 with looking at this thing and saying okay, it needs to be  
14 notification, maybe there's not a problem, but we're still  
15 going back to what's in the ground, what got put in the  
16 ground and what's the appropriate level of oversight. And  
17 I don't want us to lose sight of that just because of this  
18 fee. And Chuck, you made a quote. It may be a mine  
19 reclamation site, but it could be a landfill too. You  
20 know, when we went through these regs before -- and I've  
21 said the same thing to you.

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22           We've reclaimed mines in other parts of the  
23 country with solid waste landfills. We have to be careful  
24 how we narrowly --

25           MR. WHITE: Mr. Jones --

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1 BOARD MEMBER JONES: -- define it.

2 MR. WHITE: -- your staff did go through an  
3 assessment of about 80 facilities that both have SWIS  
4 numbers and have mine reclamation numbers, and there's  
5 about 20 of those 80 that apparently have paid fees.

6 But if you go to your own SWIS data and  
7 pull down what wastes are received by those 20 of the 80  
8 that have been paying fees, it's all commingled C&D mixed  
9 waste. It's not inerts like we're talking about here.  
10 It's construction, demolition, particle board, plaster  
11 board, wood waste, this kind of thing are being put into  
12 these landfills, so it's.

13 BOARD MEMBER JONES: And that's a landfill.

14 MR. WHITE: We've looked up and down the  
15 state. As far as we know, these kinds of inert inerts  
16 that Senator Roberti -- no one has ever paid or even  
17 thought they should pay a solid waste fee ever because the  
18 record, again we would reiterate, seems to be replete with  
19 evidence these were never intended to be regulated as  
20 solid waste landfills. And this Board is even on record  
21 for not calling them solid waste landfills.

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22           CHAIRMAN EATON: Thank you. Further  
23 questions? Maybe we can bring Mr. Ehrlich up. Mr. Jones  
24 had asked about Peck Road, and I believe he represents  
25 Peck Road.

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1           MR. EHRLICH: I do. Thank you,

2 Mr. Chairman.

3           In direct response to that, as I understand  
4 our waste streams, it is the inert inerts. In accordance  
5 with our CUP, conditional use permit with the City of  
6 Monrovia and our SWIS number and our regulations on the  
7 site, as I understand it, they are the inert inerts.

8           In addition, if I can take it one step  
9 further. To the extent that they -- that any of these  
10 sites that are currently regulated are not on a  
11 going-forward basis, a regulatory structure would allow  
12 them to alter their operations, to know what should be  
13 accepted and what should not. And this Board also has the  
14 power to regulate if they accepted anything that is deemed  
15 inappropriate in the past.

16           So we're very aware of the regulatory  
17 stature and the powers of this Board and we want to  
18 operate under it, but we just need to know what we're up  
19 against.

20           And I think also with Peck Road, we're a  
21 small business. We don't have the benefit of having the

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22 resources that New Way does to write the check. Frankly,  
23 we couldn't afford to write the check, so we filed a  
24 petition for redetermination with the BOE without paying,  
25 because that's the financial situation we're in.

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1           CHAIRMAN EATON: Okay. Ms. Shenks, because  
2 I guess you also put in a slip on Number 5.

3           MS. SHENKS: I also represent Cal-Mat's  
4 Reliance Pit Number 2 and wanted to respond to Mr. Jones's  
5 question.

6           CHAIRMAN EATON: Thank you.

7           MS. SHENKS: Reliance Pit uses concrete,  
8 dirt, and soil which is filled with supervision of an  
9 engineer. And over most of the site, it's a 90-percent  
10 compaction. To respond to Mr. Roberti's question, it's  
11 designed for subsequent commercial use.

12           I would be happy to continue, though,  
13 making remarks that I had planned to make.

14           CHAIRMAN EATON: Okay.

15           MS. SHENKS: I think that Mr. Jones is  
16 right, that the discussion about appropriate level of  
17 regulation and tier for mine reclamation sites has gotten  
18 very confused. It's gotten confused because of the SALBO  
19 (phonetic) that was fired by the Board staff to BOE.  
20 Cal-Mat was hit with a \$4.5 million fee, most of it in  
21 interest and penalties for nonpayment of past fees going

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22 back to commensurate operations in 1993.

23           So the fact that we responded with every

24 single legal argument we could that we were not subject to

25 that fee unfortunately has been taken into the context of

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1 discussions of regulations, and I think obviously it's  
2 gotten confused. I regret that, but we had no choice,  
3 faced with a bill for \$4.5 million. We also did not pay  
4 that fee. We filed the petition for redetermination and  
5 intend to continue fighting the payment of that fee  
6 retroactively.

7           What I would like to suggest here is that  
8 it's quite obvious that there's a terrible amount of  
9 confusion here and lack of consensus on how these  
10 facilities should be regulated, in particular, those  
11 facilities which are abusing the very clean, I would call  
12 Type A-1 inert material, no decomposable material at all.  
13 And I think that it's very important for the Board to take  
14 several steps.

15           BOARD MEMBER ROBERTI: Does that include  
16 the soils that go into the fill?

17           MS. SHENKS: Yes, clean soils.

18           BOARD MEMBER ROBERTI: Clean soil?

19           MS. SHENKS: Clean soils. What I would  
20 like to suggest here is that clearly this is not an  
21 appropriate time for a 15-day notice to go forward with

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22 these regulations. I think that's just off the table at  
23 this point because there are so many changes in the  
24 regulations from the last April draft that no one has  
25 really been able to digest them yet, and it's just not

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1 allowed in the Administrative Procedures Act to notice  
2 this for a 15-day commend period before proceeding to  
3 adoption.

4       So I think what needs to happen here is  
5 this: We need to first of all come up with a definition  
6 of inert materials that's suitable for mine reclamation  
7 without a Board regulation as the solid waste landfill.

8       Second, I think we need to develop an  
9 analysis of the risks posed by the use of the materials  
10 for mine reclamation. We keep hearing about these health  
11 and safety issues, but quite frankly, I don't know what  
12 they are when you're using concrete and dirt and brick and  
13 stone to fill a mine reclamation site. I would be happy  
14 to hear what they are, but so far I haven't heard them.  
15 I've heard all kinds of risks posed by other kind of  
16 construction and demolition debris, but not the types of  
17 materials that we're using.

18       The next thing I think that needs to happen  
19 is the staff report concerning SMARA as other speakers  
20 have said, and as you heard from the Department of  
21 Conservation, is sadly lacking. It is not a good basis

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22 upon which you can make the determination as to what gaps

23 there are in the regulation of these facilities.

24 As I said in our letter from the California

25 Mining Association, the Mining Association prepared to

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1 submit to you a very comprehensive report of the SMARA  
2 regulatory scheme, including authorities of the Department  
3 of Conservation, the Mining and Geology Board, and the  
4 local lead agencies, and we will do that in consultation  
5 with the Department of Conservation and the local lead  
6 agencies so that what you receive also reflects their  
7 views on what their regulatory authority is and where  
8 there's a need for further regulation by this Integrated  
9 Waste Management Board.

10 CHAIRMAN EATON: Do you believe that there  
11 should be diversion credit given for what you receive?

12 MS. SHENKS: I have no views and we have no  
13 views about diversion credit. We are -- that's not our  
14 issue.

15 CHAIRMAN EATON: I know. Unfortunately,  
16 however, it's one of those that if it's being a lawyer --

17 MS. SHENKS: We're happy for to you resolve  
18 that with the cities and counties. That's an issue  
19 between you and the cities and counties. It is not our  
20 issue.

21 CHAIRMAN EATON: But it becomes part of

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22 your issue in the sense that unfortunately, if it's not  
23 "X" and it's "Y," and if it's "Y," that's what sort of  
24 brought knew this purview and whether or not -- so I  
25 appreciate the fact that no harm, no foul for you, but it

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1 is eminently tied up in it.

2 I was just trying to get your view. I

3 wasn't trying to snooker you. I was trying to find out

4 where you are.

5 MS. SHENKS: We're very, very happy to work

6 with you to come up with language that doesn't invoke any

7 implication for diversion, and I think that we can do

8 that, if we sit down and work on it carefully. And then

9 once we have this definition of truly inert material

10 suitable for mine reclamation and we understand what the

11 regulatory authority under SMARA is and how that works and

12 whether there's a need for additional regulation, then I

13 think we can talk about what the nature of that is.

14 My expectation is that it would be

15 something like what was discussed this morning, a

16 notification provision so that you know what these sites

17 are out there, but as Mr. Jones suggests, with a provision

18 for verification that the materials they receive are truly

19 within the truly inert category of materials.

20 And then I think we need to come up with --

21 embody this in a new draft and start over again with a

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22 45-day notice of proposed rulemaking and comment because I

23 don't think there's another way to do it under the ABA.

24           Again, I would like to offer our

25 willingness to work with the staff and I want to thank

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1 Marcia Kiese for her consideration and hard work and  
2 cooperation because she's really been through a great deal  
3 in trying to bring all these very, very complex issues to  
4 the Board today.

5 CHAIRMAN EATON: Thank you. All right.  
6 Members we have two more who oppose regulations and  
7 believe it or not, we have some who support the  
8 regulations. If you can bear with me.

9 Mr. Charles Ray, if you would be kind  
10 enough to avoid repetition, the hour is late. I know it's  
11 the key to marketing, but I'm not quite sure that's going  
12 to sell today.

13 (Laughter)

14 MR. RAY: I'm Charlie Ray, Construction  
15 Materials Association of California, and I will try to  
16 avoid any repetition. I also want to -- Denise Jones of  
17 the California Mining Association asked me to make a few  
18 remarks.

19 Just briefly, our members are ready mix and  
20 concrete -- excuse me -- aggregate and ready mix concrete  
21 producers throughout Southern California, and we've been

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22 following this process for quite a while and commenting.

23           There is good in this, that it continues to

24 keep the recycling, the crushing of asphalt and concrete

25 outside the scope of the regulations and so we appreciate

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1 that. We would be considered a recycling center, as I  
2 understand, under the regulations.

3           There's a couple areas that we have  
4 questions about or are unclear about, that's the use of  
5 the concrete and asphalt and stabilizing slopes during  
6 mining, also filling in the settling ponds. We understand  
7 those may be beneficial uses and be outside the scope, but  
8 it's not entirely clear.

9           On the issue of the mine reclamation,  
10 again, we would like to be outside the scope of these  
11 regulations. We think our members undertake a beneficial  
12 act when they use this concrete, asphalt, and dirt to put  
13 back into a pit. We take -- we think this would have an  
14 adverse impact, as some commenters have said, that this  
15 would -- our members would stop undertaking this activity  
16 or would operationally cause a lot of difficulties as far  
17 as having to weigh trucks and administrative requirements  
18 that you don't have to go through in that area or are  
19 covered separately.

20           We really think that there's not a finding  
21 in the staff report that really says that there's an

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22 environmental harm. We think that, as others have said,

23 that the staff report seemed to indicate there's no

24 regulation or it's inconsistent. Just to repeat, mining

25 is really regulated by the counties and the cities or the

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1 water -- local water boards or local air districts. The  
2 Office of Mine Reclamation is part of that universe that  
3 regulates mining.  
4 I think the staff report also says, quote,  
5 "SMARA does not currently require the operator to monitor  
6 the effects of mining and reclamation on the environment,  
7 nor does it define what constitutes a reusable reclaimed  
8 condition." I want to remind everyone that all mining  
9 projects have to go through CEQA. CEQA really outlines  
10 all the monitoring and mitigation that's required. Some  
11 of this mitigation, like in Yolo County, can go on for 50  
12 years after the reclamation is complete.

13 I think just to be clear, that all the air  
14 districts -- all our sites are permitted as stationary  
15 resources. They're monitored, they're inspected for air  
16 issues for water quality. We have to be permitted as a  
17 point source and for storm water. We're permitted under  
18 general industrial permits.

19 I think I get this impression reading  
20 through the report that people think that reclamation ends  
21 when mining ends, and just to be clear, that for most

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22 operations when the mining ends, the reclamation goes on

23 for years and years. And then there can be additional

24 monitoring beyond that.

25 I think one thing we want to make clear,

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1 and Denise asked me to make clear is there's going to be a  
2 lost material that's on-site. Mostly this discussion has  
3 been about material that's imported to the mining site,  
4 but the mining site itself has soil overburden that's  
5 piled up and then returned to the mine pit at the end of  
6 the operation. And there's concern from her view that  
7 this may be subject to the fees and regulation that's  
8 proposed, being considered today. That's one area where  
9 we think that it's clearly not -- shouldn't be regulated.

10 I think overall we would just like to be  
11 sure that we can be consulted or provide input as people  
12 are studying the Mining Act or how mining is regulated.  
13 We think we do have a lot to offer there and can steer you  
14 in the right direction.

15 Overall we think that putting the asphalt  
16 and concrete and the dirt into the mine pit is helpful.  
17 It's not environmentally harmful, and we certainly would  
18 ask that if there's a lower level of regulation or no  
19 regulation than what's currently being contemplated, we  
20 would recommend that.

21 CHAIRMAN EATON: Questions of Mr. Ray?

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22 Thank you.

23 Mr. Harvey, is he still here?

24 MR. HARVEY: Yes. Members of the Board,

25 I'll try to be very brief.

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1           CHAIRMAN EATON: It would be much  
2 appreciated.

3           MR. HARVEY: Many of the previous speakers  
4 have covered most of the points that I would make. Once  
5 again, my name is Jeff Harvey. I'm here on behalf of the  
6 City of Irwindale.

7           You asked at this beginning of this  
8 session, this 2:00 session, a request for what was the  
9 level of policy change versus just a clarification. Under  
10 97-509, inert waste, when used for backfill mine  
11 reclamation was not subject to the Board's jurisdiction,  
12 and it's used to create new land in mine reclamation was  
13 considered to be a beneficial use.

14          Your new clarification, now, asserts Board  
15 jurisdiction and it is a complete reversal of your  
16 jurisdiction on this issue. And that's why we see it as  
17 much more than a minor clarification. It is major  
18 rulemaking. We believe it should at least -- again, the  
19 City of Irwindale doesn't have any dispute with the Board,  
20 and if the Board feels there are places it should  
21 regulate, we think that's fair for the Board to do. But

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22 if it is going to be major rulemaking, we should go

23 through the rulemaking process.

24           This change is going to put you in direct

25 jurisdictional conflict with every SMARA lead agency in

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1 this state -- counties, cities, and with the State Mining  
2 and Geology Board and the Administrative Unit of the  
3 Office of Mine Reclamation. You obviously have very  
4 little information about mining reclamation law in this  
5 state and about the tremendous amount of government  
6 activity already involved in mine reclamation and its  
7 regulation and oversight. You need that information  
8 before you go forward.

9 BOARD MEMBER ROBERTI: Mr. Chairman.

10 CHAIRMAN EATON: Senator Roberti.

11 BOARD MEMBER ROBERTI: I appreciate what  
12 the witness is saying as an advocate for his particular  
13 interest, and if I were in your shoes I would say the same  
14 thing. However, the reason that we have very little  
15 information is that we are vague as to what the  
16 regulations are. It's not a question of little  
17 information, it's that the regulations themselves are  
18 incomplete. There hasn't been a completion and the tying  
19 of all of ends in this area, and that's why we're here  
20 with the regulations.

21 I'm fearful that if we keep delaying and

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22 delaying because we don't have the information, this  
23 conundrum is going to last with us forever. I think it  
24 came up in January, if I'm not mistaken, and we wanted  
25 more information then. It came up when I wasn't on the

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1 Board a year ago so that we could clarify things. It came  
2 up in January and we all said we needed more information,  
3 and today I'm sure we could all use more information  
4 again.

5 But your problem is going to persist, as is  
6 that of all the witnesses, unless we bring this thing to a  
7 head and start doing what the work of the Board is and  
8 that is put some definitions. It's not a question of  
9 information, it's a question of definitions.

10 MR. HARVEY: I agree. I think that you  
11 have very well encapsulated part of the problem here, is  
12 that you've been asking for more information and believe  
13 you got it, but you still don't understand the role of  
14 local agencies in implementing the Mining Reclamation Act,  
15 what they do in a reclamation planning process,  
16 Conditional Use Permits on mine operations, and on those  
17 reclamation plans, continued oversight with annual  
18 monitoring inspections and a closure of those sites with  
19 release of financial assurances tied to successful  
20 completion of the complete reclamation plan.

21 You have a sense, as I have heard you all

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22 describe today and as I see in your staff report, that  
23 these are unregulated activities. Your own staff report  
24 says that in assessing the current amount and type of  
25 regulation of mine reclamation sites, it is apparent there

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1 are a number of unregulated areas rather than an overlap  
2 of regulatory authority. These include review of mine  
3 reclamation plans that incorporate backfilling activities.  
4 Those are absolutely regulated. They are not unregulated.  
5 They are regulated by the local enforcement agency which  
6 is the county or city. They're regulated by the  
7 Department of Conservation, State Mining and Geology  
8 Board, the Regional Water Quality Control Board and by  
9 various regional environmental agencies that are involved  
10 in --

11 BOARD MEMBER ROBERTI: I didn't -- I'm not  
12 familiar with the draft you're reading.

13 MR. HARVEY: This is your staff report.

14 BOARD MEMBER ROBERTI: Our staff's  
15 testimony was rather clear that this is a regulated area.  
16 The problem is lack of constancy by the various entities,  
17 some being apparently very lax to the point of  
18 non-regulation, even if there is technically a regulatory  
19 duty on them.

20 So I think my colleagues and I certainly  
21 recognize it as an area that's regulated, but little

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22 constancy, from what I gather, jurisdiction to  
23 jurisdiction. So that's why one regulatory body, this  
24 agency here, making the definition and the enforcement for  
25 all hopefully might be of some help.

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1           So I appreciate what you're saying because  
2 I know it can be very frustrating if you think we're not  
3 hearing the way it is. But I think we do recognize it as  
4 regulated. What is unclear as what's going on out there  
5 is consistency or constancy of regulation.

6           MR. HARVEY: I understand that the staff  
7 report, based on a conversation with a few other staff  
8 members at the Department of Conservation, arrived at that  
9 conclusion. That may be that's something you should have  
10 more information about. I don't believe it's as  
11 inconsistent as it's been portrayed to be, particularly  
12 not as it's related to backfilling using inert materials  
13 in landfills. That is not very common in mine  
14 reclamation, in fact, and is something that every local  
15 agency will scrutinize and every local agency has an  
16 absolute interest in, local and much closer interest than  
17 the State Board has. It's not something those local  
18 agencies have simply shrugged and looked away from.

19           I think that at least you need to have a  
20 better understanding of what local agencies are doing and  
21 where they might need your help and where your proposed

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22 policy changes might be simply inserting another level of

23 regulatory authority that confuses the issues rather than

24 helps clarify them.

25           There is a huge regulatory structure in

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1 place out there that the local agencies are working with,  
2 and I believe, as Irwindale as an example, very  
3 effectively. There is a large effected community here  
4 that you should have input from as you go on to this level  
5 of rulemaking. That would be some of those cities and  
6 counties, the mining companies of course, and some of your  
7 sister state agencies.

8 Have some of the Mining and Geology Board  
9 come and talk to you about what they do and where it makes  
10 sense for you to make a fit with them or where it might  
11 not make sense. It is a significant departure from your  
12 previous policy.

13 CHAIRMAN EATON: Thank you.

14 MR. HARVEY: Thank you very much.

15 CHAIRMAN EATON: The court reporter needs  
16 five minutes if I'm not mistaken.

17 (Brief recess taken)

18 CHAIRMAN EATON: We're heard from the  
19 loyal opposition. Now I understand we're going to hear  
20 from those who would like to speak in support of the  
21 regulations, and I'll begin with Mr. Chuck Helgut. Still

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22 here? Come on down. Thank you for waiting patiently all

23 day.

24 MR. HELGUT: Mr. Chairman, Members of the

25 Committee, Chuck Helgut, Allied Waste Industries.

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1           Board Member Moulton-Patterson, welcome. I  
2 should assure that you most of the meetings don't go like  
3 this. I'm sure you've heard that already. Very, very  
4 briefly --

5           CHAIRMAN EATON: But now that you've spoken  
6 to it, she actually has verification and veracity and all  
7 of the other things that go with it.

8           (Laughter)

9           MR. HELGUT: I would like to express  
10 qualified support for the regulations and the regulation  
11 package today. In general, the regulations I think move  
12 towards the goal of regulatory equity and fee equity and  
13 to that extent support them. We do have some questions  
14 and concerns about the regulations, and I will be  
15 extremely brief on the several issues of concern.

16           The first is a question about how the  
17 regulations propose to include wood ash from biomass  
18 conversion into the Type A inert waste, and we believe  
19 that this categorical type of exemption for wood ash from  
20 biomass conversion is incorrect, and at the very least,  
21 this should be a Type B inert, and if not, those types of

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22 waste excluded from the consideration of construction and

23 demolition debris.

24 We work with -- we receive this waste all

25 the time along with the lab analysis and analytics

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1 associated with that and can guarantee that there's often,  
2 often metal contamination in this type of waste. And we  
3 handle it often as a designated waste, and it would  
4 certainly not be appropriate to be considered Type A  
5 waste.

6 We strongly urge the Board to consider  
7 moving that out of that category of waste.

8 CHAIRMAN EATON: Where would you move to it  
9 on our scheme?

10 MR. HELGUT: Over to Inert B, certainly  
11 into Inert B, and I think again consider the fact that  
12 some of this is designated waste and may not even be  
13 appropriate in that category at all.

14 Quite frankly, all of my other concerns  
15 have been addressed or will be addressed in subsequent  
16 testimony. I won't take up any more of your time, but I  
17 will answer any questions and I will stay here as long as  
18 you all do.

19 CHAIRMAN EATON: Thank you, Mr. Helgut.  
20 Thank you. Rick Best.

21 MR. BEST: Thank you, Mr. Chairman. Thank

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22 you for not saving the best for last as you most often do.

23 (Laughter)

24 MR. BEST: Welcome, Ms. Moulton-Patterson.

25 Appreciate looking forward to meeting with you and getting

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1 more of your interest in these issues.

2 I want to first begin by saying I'm not  
3 necessarily a supporter or an opponent to the regulations.  
4 I think the comments that were made by Mr. Jones and  
5 Roberti were definitely on target, that we need to  
6 separate the issues that we're talking about in terms of  
7 the regulatory issue and with regards to whether these  
8 folks, what tiers or how they should fall in the  
9 regulatory structure, the issue with regards to the fee  
10 issue in terms of whether these facilities should, in  
11 fact, be paying a fee, and the third issue being the  
12 diversion issue. And the diversion issue is really the  
13 one that I think is the most important one from our  
14 perspective, that is the one that I really want to focus  
15 on. I think all of them are certainly important issues.

16 The fact is while we try and separate these  
17 issues, how the Board responds with regards to the permit  
18 issue under the permit statutory framework does have an  
19 impact because the Board's statutory language with regards  
20 to the diversion accounting specifically relates to the  
21 disposal of material at permitted solid waste facilities.

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22 So I think it's important to consider that. So as the  
23 Board comes to an agreement on these regulations, there  
24 may need to be a separate statutory change or something to  
25 address the diversion issue.

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1 I first wanted to say that absolutely,  
2 Mr. Roberti, we're not at all suggesting that this  
3 activity, clearly this is material that's going into a  
4 hole in the ground, and we don't think that activity  
5 should be considered diversion. Certainly mine  
6 reclamation is a good thing, something that perhaps we  
7 ought to have public policies to promote. We certainly  
8 have some of those on the book already, but I don't think  
9 we should promote it by granting that activity, the  
10 definition of diversion.

11 But I think the problem is that we're  
12 operating under the Waste Board's disposal reporting  
13 system as our method for accounting, and there's really  
14 kind of two problems with that.

15 Number one is we use a generation basis for  
16 measuring what is your goal based on. You're using a  
17 generation basis and that's based on what happened in  
18 1990. And the formulas that we're using do not  
19 necessarily reflect the changes in the production of  
20 inerts. Certainly it reflects changes in how businesses  
21 generate waste, how residents generate waste, but if you

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22 suddenly have a big construction project or a freeway that

23 gets torn down, that's certainly going to skew the numbers

24 with regards to inerts. That's kind of the first

25 issue.

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1           The second issue is that the Board under  
2 the current statutes is really forced into making an  
3 either-or determination; that is, is it disposal or is it  
4 diversion for the purposes of future reporting in terms of  
5 meeting your goal year reporting. Certainly if it's not  
6 counted as disposal, then essentially that activity  
7 becomes diversion, and that's certainly not what we want  
8 to see happen. But similarly, if it's counted as  
9 disposal, then what does that impact in the diversion  
10 numbers?

11           Certainly there's two scenarios to look at.  
12 Number one it could be a windfall diversion in the sense  
13 that if that material was going to a permitted facility in  
14 1990 but then went to an unpermitted facility in the year  
15 2000, then suddenly we've created a diversion windfall.

16           Similarly, if the material was going to an  
17 unpermitted facility in 1990 but then went to a permitted  
18 facility, which could be of course a mine reclamation  
19 project, now we've suddenly added an extra 20 percent,  
20 let's say, disposal onto a local government's disposal  
21 numbers.

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22           You take a community that generates 100,000  
23 tons and they had planned for meeting the 50 percent  
24 diversion goal, but then all of a sudden there's an extra  
25 20,000 tons that they hadn't planned on, that is now going

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1 to be counted as disposal. Well, that takes their  
2 diversion rate down from 50 percent to 30 percent. So I  
3 think that's certainly something that needs to be  
4 considered.

5           We certainly think that that material ought  
6 to get recycled, that it would be better that that  
7 material not go into a hole in the ground, but the fact is  
8 the only way that community in that case can get back to  
9 the 50 percent level, is that all of that material was  
10 kept out of the mine reclamation project. Not 50 percent  
11 of it, all of it. So the only way they can get from the  
12 30 percent back to the 50 percent is if all of that  
13 material is kept out of the mine reclamation project.

14           Maybe that's a policy that we think is  
15 appropriate, but I can understand that local governments  
16 may not feel that is one that they were planning for when  
17 they developed their programs and we're calculating the  
18 numbers.

19           But I think what is a city to do in that  
20 situation? Here they are faced with 20,000 tons that is  
21 now going to be calculated disposal. I think what's going

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22 to happen, and what was mentioned by Ms. Edwards earlier,

23 is that they're now going to be looking at where can we

24 send this material alternatively and I think what people

25 are going to be looking at is alternative daily cover and

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1 intermediate cover because under statutory -- under the  
2 definitions that have been adopted by legislation, AB  
3 1647, anything used in a construction operation of a Class  
4 3 landfill is considered diversion.

5           So now what we -- what the Board is trying  
6 to do by defining this activity as disposal, i.e., prevent  
7 the diversion windfall is going to take place because now  
8 this material is going to get sent over to a Class 3  
9 landfill and considered as diversion. And now that  
10 there's a lot of communities looking at redoing their base  
11 years, that's going to further legitimize that this  
12 activity is going to be diversion.

13           What's the solution? What we've suggested  
14 in the legislature and I think to many of your staff is  
15 that can we try and come up with a process where this  
16 material isn't considered disposal or diversion, that this  
17 material -- the materials I'm specifically talking about  
18 is inert, very strictly defined, certainly only those  
19 materials that are truly inert inerts, those materials  
20 that go to mine reclamation projects -- they should just  
21 be taken out of the equation completely. They shouldn't

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22 be considered disposal, they shouldn't be considered

23 diversion.

24 I think that's an approach that I think

25 addresses the concerns, that we don't want to hurt local

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1 governments by saddling them with disposal numbers that  
2 they hadn't accounted for, and we don't want to create a  
3 diversion windfall for those communities that were  
4 previously sending it to a permitted landfill and now send  
5 it somewhere else.

6           So I think that's the approach that we  
7 think should be taken. The question is, is that something  
8 that the Board can do within its current statutory  
9 framework? I can't answer that question. Certainly we're  
10 in discussions about seeing if there is a way to try to craft  
11 a clarification so that the Board can do that, but I think  
12 that's ultimately the approach that's going to solve the  
13 diversion issue that we're faced with.

14           With that I'd be happy to answer any  
15 questions.

16           CHAIRMAN EATON: Any questions?

17           Are you saying from this point forward?  
18 Because many of the cities and counties have not had the  
19 impact yet; correct? They haven't tried to back them out  
20 or add them in, as the case may be, in the catch-22.

21           MR. BEST: The fact is there's a lot of

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22 jurisdictions that are now looking at redoing their base  
23 years. So if this material, you know, that previously may  
24 or may not have been -- sometimes it shouldn't have been  
25 accounted in the base year because the statute says

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1 permitted, but in many cases they did count it in their  
2 base year. Now as people start redoing their base years  
3 and if they start diverting that material to, for example,  
4 alternative daily cover program, now suddenly we've  
5 created a process for all this activity to now suddenly  
6 count as diversion and, I think, really create what I  
7 don't think was ever intended in terms of how local  
8 governments are intended to comply with AB 939.

9           CHAIRMAN EATON: I agree. I'm trying to  
10 find out from what day forward. If you change the rules  
11 in the middle of the game, that's the risk you run. If  
12 you're not careful with the definition, then in all the  
13 base years and all the other things you're going to have a  
14 rush to judgment, and the same effect you're trying to  
15 avoid by saying it's neither "X" nor "Y" is going to  
16 occur. So I'm trying to say at what point does that do.  
17 Is that something the Board should do as part of the  
18 extension program and take that into consideration because  
19 then everyone actually gets to calculate based upon what  
20 the rules of the game were established at that time with  
21 no prejudice as to whether or not in the future, because

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22 that's going to be a key component.

23 Do you see what I'm trying to say?

24 MR. BEST: I see what you're saying.

25 CHAIRMAN EATON: That's where I'm trying to

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1 get in terms of a view point. I think that is an  
2 important kind of aspect, and that really sort of goes  
3 back to where all of our concerns are, is basically -- by  
4 action you basically create a reaction, which basically  
5 gets people in through the back door, and maybe at that  
6 point you take it into consideration as part of the good  
7 faith effort or at least some other respect.

8 MR. BEST: I think that is certainly within  
9 the Board's broad authority to look at the factors that  
10 local governments have faced. I think our concern is with  
11 regards to the forcing local governments to make the  
12 decision, do we want to go that route or do we want to  
13 just be safe and have that material go to alternative  
14 daily cover program? I think we're better off trying to  
15 clarify ahead of time rather than try and hope that the  
16 extension or reduction process can take care of that.

17 CHAIRMAN EATON: I think a lot of it is  
18 with the kind of weight and volume that you're talking  
19 about with the kind of production, don't forget in the  
20 alternative daily cover there's a performance standard  
21 limitation on just how much you can use.

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22           So when we're talking about this rush to  
23 ADC, let us also be conscious of the fact that there is a  
24 performance standard, there is only a limited amount  
25 that's going to go there or what have you, based on a

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1 market condition. I agree with you. I don't want to see  
2 it go there either, but I also believe it's a performance  
3 standard. I don't believe that it's all going to rush to  
4 ADC. Hopefully in our future Board meeting where we take  
5 up the issue of ADC, which I guess is just around the  
6 corner, we'll have some of that issue flushed out. I  
7 think you're right. What you want to do is direct it to a  
8 much more productive and beneficial use, whatever that be.  
9 Reuse actually is what you want to try and do.

10 MR. BEST: Absolutely. Ultimately we want  
11 to craft a policy that does promote that, and when I  
12 suggested that one of the solutions -- that my approach to  
13 the solution on the diversion side was to perhaps try and  
14 back some of those numbers out, that I think alongside of  
15 that, I think there ought to be perhaps a separate  
16 requirement or something that ensures that the maximum  
17 effort will be taken to try and divert those materials,  
18 even though they may not be part of the diversion  
19 calculation.

20 CHAIRMAN EATON: Thank you.

21 Mr. Edgar.

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22 MR. EDGAR: Good evening, Chairman and  
23 Board Members. I'll be concise today. I'm Evan Edgar on  
24 behalf of Edgar Associates for the California Refuse  
25 Removal Council. I will talk about the regulations only

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1 and not about the fees or 939 credit.

2 With today's item, CRRC recommends for  
3 Option Number 2, to do a 15-day review. I think we have  
4 the same issues with better definitions. We have a new  
5 context and we have new witnesses and new Board Members.  
6 So I believe that we are kind of retreading some old  
7 issues, but I think that we brought some good issues  
8 today.

9 In regards to the tier permitting, this is  
10 the last of many tiers. We've been doing this since 1993.  
11 We had a methodology developed in 1995 that there is a way  
12 in order to slot facilities into the tiered permitting  
13 structure, and that's how we develop the tiered structure.  
14 But what I wanted to point out today, we have different  
15 choices than just C&D and inerts to mine sites or C&D and  
16 inerts to landfills and ADC. What I hope for and what we  
17 do is business opportunities for CRRC members, is that we  
18 make a product. We actually make base rock biomass fuels,  
19 we make dimensional lumber, we make mulch, we make green  
20 products for the green industry for local use. That is a  
21 rush that we are hoping for in order to get the regulatory

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22 equity and within these regulatory tiers.

23           One thing I want to point out is the path

24 model that is place (inaudible) inerts. It will be ideal

25 to follow that path model. And I'll have more detailed

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1 written testimony on that later in the name of brevity.

2           Key issue number one, disposal. I would  
3 like to follow the staff report here on the key issues  
4 that were originally intended to be discussed today that  
5 we never got to. But on key issue number one, disposal,  
6 we would concur that storage of these materials for  
7 greater than one year would constitute disposal. We  
8 concur with that. There's no need to create additional AB  
9 2136 sites out there.

10           Key issue number two, residential debris.  
11 At one time it was per load and they talked about average  
12 over one month. I concur with Mr. Jones's assessment  
13 today that a 10-percent tolerance over a 100 tons per day  
14 facility, that would be 10 tons per day. If you average  
15 that over a month, it would be certain peaks per day,  
16 which is 20 to 25 tons of residual per day, which would  
17 qualify as a small transfer station. I believe we have to  
18 take another look at the residual debris.

19           Key issue number three, mine sites. I  
20 believe with regard to Agenda Item 4, I believe that the  
21 Waste Board not stray from the previous resolution. If

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22 anything, if you look at the staff report today that was

23 used in November 19th, 1997 on page 4-45, middle -- about

24 the fifth paragraph down, they talk about mine

25 reclamation. That is a verbatim of what is today's

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1 resolution being proposed, not one bit different.

2 I believe that the Waste Board's intent  
3 back in November 1997 and the language I see in the staff  
4 report from November 1997, by transposing that same  
5 language to today's resolution is not a stray, but a  
6 reaffirmation of what was decided on November 19, 1997.

7 I think we talked about mines enough today,  
8 but the key issue is where is the gap. The gap is taking  
9 off-site materials and filling a hole up. I believe that  
10 the smart plan is good for closure and post-closure and  
11 long-term maintenance, but the gap is where there is no  
12 regulation over what type of materials and how is that  
13 filling plan filled up. That is where the Waste Board has  
14 authority and there is no overlap.

15 issue number four, inert types. I believe  
16 we came a long way, A, A Plus, A minus, B, inert inerts.  
17 That's good discussion. I believe that different waste  
18 Type B could be -- doesn't belong there on designated  
19 waste types and other aspects. I believe we need to have  
20 some consistency with previously adopted regulatory tiers  
21 from nonhazardous to ash. So I think that we came a long

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22 way there and it can only get better.

23 Key issue number five, AB 59. I agree

24 there needs to be some type of interim permit for 90 to

25 180 days. I think it's a good idea. I think we should

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1 address it and accommodate the transition period.

2 Key issue six, financial assurances. I

3 believe that we should have them. I believe we have too

4 many AB 2136 or SB 2132 opportunities cropping up

5 statewide. I believe we need financial assurances.

6 So in summary, we would like to have

7 Option number two, but I think there's a lot on the table

8 out there. Maybe 15 days is too much too soon. There's

9 modifications that could occur, but I think we're just

10 kind of retreading some old issues. I think we came a

11 long way and support these regulations with a few minor

12 modifications.

13 Thank you for your time today.

14 CHAIRMAN EATON: Thank you. Any questions

15 of Mr. Edgar?

16 Last but not least, and who has been

17 patiently waiting, Justin Milan. Thank you for your

18 patience.

19 MR. MILAN: Mr. Chairman, Board Members.

20 CHAIRMAN EATON: Is Mr. Knight still here?

21 MR. MILAN: No, he's not here.

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22 CHAIRMAN EATON: Okay.

23 MR. MILAN: Mr. Chairman, Board Members,

24 it's not often that the LEAs have the final word.

25 (Laughter)

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1 MR. MILAN: I'm going to relish this

2 opportunity, but I won't keep you long.

3 CHAIRMAN EATON: Can't you see how the

4 partnership 2000 works?

5 (Laughter)

6 MR. MILAN: Mr. Chairman and Board Members,

7 on behalf of the Environmental Health Directors and LEAs,

8 we would like to urge moving this package forward. It's

9 long overdue. We need it. It's going to clarify a number

10 of things that have been irking LEAs and operators for a

11 long time. We must say that we can't comment on the

12 issues that affect the market share, the fees, and the

13 diversion credits. That's generally not our role, but we

14 do urge you to look carefully at that. It does have

15 serious ramifications on our brethren in local government.

16 Generally the LEAs would just like to offer

17 two suggestions, maybe addressed in the regs or may have

18 to be addressed outside the regs. But very briefly, we

19 feel that there does need to be some clarification for

20 diminutis amounts and that may be for an exclusion or an

21 exemption. That could be done in an LEA advisory or could

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22 be addressed in the regs themselves, so we will comment on

23 that during the 15-day period.

24 Secondly, given the fact whether it's clean

25 inert inert, or inert inert, or however we define it, some

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1 consideration may be given to some statutory changes that  
2 could reduce the frequency of inspection. From an LEA,  
3 from a public health, from an LEA perspective, we're not  
4 sure if we can justify inspection of an inert inert in a  
5 registration category once a month. That just may put an  
6 unnecessary financial burden that we really can't justify,  
7 but we believe we can deal with that in the reg package.  
8 We'll make these comments in the 15-day period.

9 Charge ahead. Thank you, sir.

10 CHAIRMAN EATON: Thank you. Any questions?

11 Senator Roberti, and I think Mr. Chandler  
12 wanted to make a comment as well.

13 Mr. Chandler.

14 MR. CHANDLER: I think we have had many  
15 witnesses come forward and appropriately indicate that  
16 perhaps the more appropriate way of proceeding, this  
17 should be on the regulations and not mix the two issues  
18 between the fees. But I do feel compelled to speak a  
19 little bit since Mr. White, I think, has presented a  
20 picture that you somehow have a rogue director up here  
21 issuing letters to the BOE that have no foundation

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22 whatsoever and any statutory grounding as to why we made

23 the taking acquisition.

24 I think it's important in that regard that

25 we at least allow Elliot to walk the Board through,

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1 historically, what is this Board's statutory authority for  
2 why we have the position we have taken historically on  
3 requiring these type of solid waste facilities permits  
4 over these facilities that Mr. White brings forward; and  
5 more appropriately, have the Board understand it was the  
6 purpose of today's proceedings to recognize that through a  
7 tiered structure, a structure that we've had since 1993,  
8 that we were attempting to bring forward how we could  
9 reduce or at least have an appropriate level of regulatory  
10 oversight against that backdrop of existing authority.  
11 And as this Director, I'm not prepared to concede that we  
12 should relinquish our authority in this area or have ever  
13 not had it in the past and don't have it in the future. I  
14 think we've lost that discussion today.

15 I think it's appropriate that Mr. Block  
16 give the Board a foundation for what it was I was  
17 operating under when I issued those letters to the BOE  
18 indicating we felt those fees were applicable. If I could  
19 have just five minutes on that, I would appreciate it.

20 CHAIRMAN EATON: Mr. Block.

21 MR. BLOCK: If all goes well, I won't even

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22 take five minutes. Elliot Block from the Legal Office.

23 As Mr. Chandler had indicated, I'm not here

24 to comment specifically on the regs themselves or what the

25 Board would or would not do but give you some context on

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1 how we got here.

2 Under current statute and regulation, the  
3 Board does have jurisdiction over construction and  
4 demolition inert sites. Solid waste definition in the  
5 Public Resources Code indicates a number of examples that  
6 includes construction and demolition waste. And you'll  
7 not find anywhere in the statutes relating to how these  
8 facilities defined or the permitting statutes or the like  
9 or any exception for inert facilities. In fact, there are  
10 a number of statutes and regulations that include inert  
11 inerts in the definition of solid waste.

12 One of the things that was discussed  
13 earlier today was the LEA advisory number 12 for  
14 nontraditional facilities and what that said. I'm just  
15 going to zoom in, if I can, on -- I'm going to have to  
16 read this. I apologize. I'll read the line to you.

17 Basically it's a very short advisory that  
18 the Board put out in 1994 when we began this whole process  
19 of doing tier permitting packages, and there's language  
20 that's bolded in that advisory. And it says, "Until the  
21 Board takes action on specific handling methods, LEAs are

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22 strongly encouraged to accept applications for solid waste

23 facilities permits for materials and handling methods

24 which render evaluation," and inert landfill and

25 processing is on that list.

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1           But then it goes on to say the reason why.  
2 "A delay in the processing of these permits would  
3 eliminate the administrative burden of revising or  
4 modifying such permits if changes to this process are  
5 included in the Board's action." The tiered permitting  
6 structure was always about that we were looking at  
7 reducing the level of regulation from the previous  
8 one-size-fits-all permit.

9           Currently under current statute and  
10 regulations, all the facilities that we've been talking  
11 about today -- C&D disposal sites, inert disposal sites --  
12 are subject to the Board's jurisdiction, and it's the tier  
13 regulations themselves that would allow them to get  
14 something less than a full permit.

15           In addition to that, I just wanted to make  
16 one quick comment on the retroactive fee issue. One of  
17 the things that's important, while it's obviously an issue  
18 that's related to all the discussion that was going on and  
19 that's why it was discussed in so much detail today,  
20 although you don't see any language in the regulations  
21 relating to the fee, but the fact is that they are

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22 different issues. The retroactive fee issue is being  
23 driven by the fact that the three, and actually four, as  
24 we talked about today, the facilities that we're talking  
25 about all have solid waste facilities permits.

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1           BOE's determination and the fact that these  
2 facilities are dealing with this issue right now is not  
3 based on these regulations or any other regulations that  
4 the Board had. In fact, the Board doesn't have  
5 regulations that reference the fee at all. It is based on  
6 the fact that they have a permit, and that's the way that  
7 we consistently interpreted those statutes and that's the  
8 way that the Board of Equalization has consistently  
9 interpreted those statutes.

10           So the issue that's arisen is not a  
11 function of these regulations themselves, it's a function  
12 of that end. I would add the fact that those four  
13 facilities have solid waste facility permits just  
14 underscores the fact that the Board does have jurisdiction  
15 over those types of activities. If there was no  
16 jurisdiction, there wouldn't be a permit in the first  
17 place. I'm not sure. I was just asked, I think, to make  
18 a couple of clarifying comments.

19           The point of this regulation is to finally  
20 get us to the point where we figure out -- the Board  
21 decides what's the appropriate level of regulation, but

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22 it's important to keep in mind that that jurisdiction is  
23 always there, and it's these regulations that are in  
24 effect, although it doesn't look that way, but these  
25 regulations are in effect potentially lowering the level

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1 of regulation that would otherwise be required.

2 CHAIRMAN EATON: Thank you.

3 Any questions for Mr. Block for

4 clarification?

5 MR. EHRLICH: Mr. Chairman, may I take 30

6 seconds of the Board's time?

7 CHAIRMAN EATON: Sure.

8 MR. EHRLICH: Thank you. Thank you,

9 Mr. Chairman. Again, Ken Ehrlich on behalf of Peck Road.

10 To clarify how Peck Road got its permit, I

11 think it puts a little bit of business reality into how

12 this all works, not to go into the issue of whether this

13 Board has jurisdiction or what happened in 1997 or 1999.

14 Peck Road got its permit because when it

15 applied for its Conditional Use Permit in the County of

16 Los Angeles in 1995, it was told it had to get some sort

17 of permit from the Integrated Waste Management Board or

18 from an LEA. So it's simply that's how this generated a

19 SWIS number back in 1995. If it would have known then

20 that it would have to deal with these issues, now I

21 guarantee it would have given a lot more consideration

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22 toward getting a SWIS number back then.

23 Now, the mere fact that it has a SWIS

24 number doesn't alter any of the materials that it's taken,

25 and with all due deference to the Board, I think that that

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1 reality of how the permit actually generated itself at  
2 that time puts a much more -- a realistic spin on what's  
3 going on in the business community, at least back in 1995.

4 Thank you for your time.

5 BOARD MEMBER JONES: Mr. Chairman.

6 CHAIRMAN EATON: Mr. Jones.

7 BOARD MEMBER JONES: You said that in order  
8 to get your Conditional Use Permit, you had to get a  
9 permit. Now, how you make the stretch that because part  
10 of the Conditional Use Permit was to get a permit from  
11 this Board is you wouldn't have done that if you had known  
12 that you would have paid fees, you wouldn't be operating  
13 because you would not have fulfilled your conditional use  
14 permit.

15 I think -- unless I'm missing something,  
16 that was the condition of you being able to operate. The  
17 fact that you didn't know, or your client didn't know that  
18 they owed \$1.34 a ton, I don't think that burden goes to  
19 us.

20 MR. EHRLICH: No one is necessarily saying  
21 where that burden should be placed. I'm trying to explain

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22 the business reality of getting the Conditional Use Permit

23 to accept inert fill, sand- and gravel-type materials back

24 in 1995.

25 BOARD MEMBER JONES: Right.

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1           MR. EHRLICH: I understand the paradox that  
2 you're discussing, Mr. Jones.

3           BOARD MEMBER JONES: I think we're all  
4 going to try real hard to try to come up with an equitable  
5 solution, but I've been saying since day one to pay the  
6 fees. But I'm willing to move off of that a little bit if  
7 we can clarify the waste, clarify the material that's  
8 going in, and ensure the public health and safety, but I  
9 think that if it is a condition of getting a use permit to  
10 get a permit from this Board, then that was the  
11 appropriate level of oversight by that local jurisdiction,  
12 in my view, because that's what they demanded of everybody  
13 in that area, I'm assuming, that they get a solid waste  
14 facility permit.

15           MR. EHRLICH: Then the question is why do  
16 you only have three who actually got permits?

17           BOARD MEMBER JONES: Right. And that is  
18 inequitable. That I agree with.

19           MR. EHRLICH: Thank you for your time.

20           CHAIRMAN EATON: Any other questions?

21 Mr. White, couple of quick comments and the long awaited

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22 action.

23 MR. WHITE: Yeah. We've never objected for

24 to getting a solid waste permit for the New Way facility.

25 It's just that we didn't think we were getting a permit

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1 for a solid waste landfill. There are lots of solid waste  
2 permits that aren't solid waste landfills. There's  
3 transfer stations, there's MRFs, there's other kinds of  
4 facilities. We thought we were getting a permit for  
5 something different at the time and certainly not for a  
6 solid waste landfill, and there lies the difference. We  
7 don't argue the Board has jurisdiction over these  
8 facilities or could exercise jurisdiction in a variety of  
9 ways. It's just that we didn't realize it was a solid  
10 waste landfill.

11           CHAIRMAN EATON: All right. Item 4 and 5,  
12 now we've heard all of the testimony, just to kind of  
13 recap and reframe the issue. With regard to Item 4,  
14 that's Resolution 1999-392, which would be to clarify and  
15 supersede the previous Board Resolution 97-509. Our  
16 options are to either adopt the proposed Resolution 392,  
17 modify it -- advise staff to take some alternative action  
18 regarding 97-509 or take no action. Entertain a motion  
19 right now or take some comments.

20           BOARD MEMBER ROBERTI: The resolution is  
21 under 4?

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22           CHAIRMAN EATON: The resolution, Senator,  
23 is the one that dealt with -- early on as we dealt with  
24 the clarification of the issue as to what was the Board  
25 action back in, I believe, November of 1997, prior to both

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1 of our arrivals here at the Board. And that was an issue  
2 that they had kind of asked us that if we could either  
3 take it up in the context once we discussed Item 5, but we  
4 never did take any formal action with regard to Agenda  
5 Item 4.

6 BOARD MEMBER ROBERTI: And the resolution  
7 has demolition and construction wastes, to clarify the  
8 definition of demolition and construction wastes.

9 CHAIRMAN EATON: The staff says it  
10 clarifies the opponents --

11 MS. NAUMAN: That one characterizes --

12 CHAIRMAN EATON: Characterizes it as a  
13 change or a redirection of the Board's policy, I think is  
14 the correct way. And I don't want to mischaracterize  
15 either of the positions, but I think that pretty much sets  
16 the parameters. The opponents of the resolution as  
17 proposed characterize it as a change in Board policy or a  
18 different direction that the Board is taking, whereas the  
19 Board says it's simply a clarification. I was trying to  
20 inform the Senator where we were on that. So our option  
21 is we can adopt it, ask for modifications, take no

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22 action.

23 BOARD MEMBER ROBERTI: Why do we have to

24 adopt this if we are going to 5?

25 CHAIRMAN EATON: We're under no compulsion

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1 to adopt it.

2 BOARD MEMBER ROBERTI: I know we're not  
3 under compulsion, but what are the benefits of the policy  
4 issue?

5 CHAIRMAN EATON: Mr. Block.

6 MR. BLOCK: The original reason for the  
7 item to come up is because the previous resolution had  
8 been cited in a number of instances to indicate that the  
9 Board had already made the decision regarding how it was  
10 going to regulate -- actually not regulate mine  
11 reclamation sites. So the purpose of the resolution was  
12 to clarify that the Board, in fact, two years ago said  
13 essentially they were okay with the concept, but the  
14 rulemaking process is where we were going to decide that.  
15 The board -- we were trying to do that and get that out of  
16 the way before discussing the regulations. Of course we  
17 ended up, with the way things were going --

18 BOARD MEMBER ROBERTI: I understand. That  
19 kind of tightens up what we did a bit except frankly, I  
20 think the better public policy is that the Board left it  
21 vague. There's no shame in leaving things vague. The

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22 legislature, when I was there, we did it many times.

23 (Laughter)

24 CHAIRMAN EATON: That's the --

25 BOARD MEMBER ROBERTI: I don't sit here in

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1 shock that there's a resolution that was vague. I just  
2 assume it was done that way on purpose. Somehow we have  
3 to tie the knot here and I don't see why.

4 MS. TOBIAS: Senator Roberti, Mr. Chair, if  
5 I may.

6 CHAIRMAN EATON: Yes, please.

7 MS. TOBIAS: I guess what I would suggest  
8 on this is that I do think it was an important -- it was  
9 important that we have this discussion because I think  
10 that what was being touted was that the resolution by  
11 itself seemed to indicate that the Board did not have  
12 authority to regulate in this area.

13 I have to say, from a legal standpoint,  
14 that it doesn't make any difference whether you adopt this  
15 resolution or not because in my opinion, the previous  
16 item, when you put together the agenda item, the  
17 resolution and the transcript, I think it's fairly clear  
18 what the resolution "whereas" was talking about. I think  
19 it's a good example of how we sometimes use a shortcut to  
20 not make the "whereases" too long, and had we carried out  
21 the rest of the sentence in that staff report, perhaps

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22 there wouldn't have been quite the confusion over that.

23           So from a legal standpoint as Board's

24 counsel, I think to a certain extent that what's been

25 clarified today is the discussion that we've had about the

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1 authority, and I think if the Board wants to adopt it, I  
2 think it certainly clarifies a little bit further. But as  
3 far as I'm concerned, it says the same thing that it said  
4 before and the "whereas" is really taken out of context.

5 BOARD MEMBER ROBERTI: Mr. Chairman, based  
6 on what Counsel is saying, my own feeling is that we don't  
7 need to do this resolution on 1999-392 for the point that  
8 Ms. Tobias raised. In addition, I don't see anything here  
9 which indicated that we didn't reserve -- we didn't say we  
10 didn't have the power to make the regulations. Whether we  
11 chose to enter into that field at that juncture is vague.  
12 The truth is, it was vague. So why don't we just leave it  
13 that way?

14 I don't think that in any way indicates  
15 that we abandon our power in the area, which I don't think  
16 was the case, and certainly if we pass a resolution on 5,  
17 that certainly indicates where the mind of this Board is.

18 CHAIRMAN EATON: Okay. With that --

19 BOARD MEMBER JONES: Mr. Chairman.

20 CHAIRMAN EATON: That would simply move for  
21 Option Number 4, which I think is take no action.

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22 BOARD MEMBER PENNINGTON: If that's the

23 Senator's motion.

24 BOARD MEMBER ROBERTI: On Item 4.

25 CHAIRMAN EATON: On Item 4, I was reading

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1 the options for us, and I think the other thing -- and I  
2 will basically say as well that I do believe, as you, that  
3 it doesn't really have the impact. It was just raised in  
4 a legislative arena as justification for where the Board  
5 was, that the argument was that it was clear.

6 The other argument on the other side is  
7 that it wasn't clear or -- that each side represented it  
8 was clear. We are saying no, neither side is clear, it's  
9 vague.

10 BOARD MEMBER ROBERTI: That's right.

11 CHAIRMAN EATON: I think is the proper way  
12 to characterize it.

13 (Laughter)

14 CHAIRMAN EATON: So that would be the  
15 action, we take no action. We leave as it is. We don't  
16 need a motion or anything.

17 BOARD MEMBER JONES: Mr. Chairman.

18 CHAIRMAN EATON: Mr. Jones.

19 BOARD MEMBER JONES: I don't have a problem  
20 with that, except that if I hear in testimony that this  
21 Board refused to have a clarifying resolution to determine

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22 where we're coming from, because I clearly am amazed at --  
23 not of people's recollection of that discussion when you  
24 look at the transcript and everything. So I don't have a  
25 problem with that, but I'm fully expecting somebody to use

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1 that as part of the testimony in some other hearing, that  
2 we've refused to change our resolution.

3 BOARD MEMBER PENNINGTON: For the record,  
4 it makes it clear we didn't refuse, we just didn't do  
5 anything.

6 BOARD MEMBER JONES: Because we thought our  
7 first one was fine.

8 BOARD MEMBER PENNINGTON: Right.

9 BOARD MEMBER JONES: I don't have a problem  
10 with that.

11 CHAIRMAN EATON: No action is taken and  
12 thank you all for that long --

13 BOARD MEMBER ROBERTI: We're going to 5.

14 CHAIRMAN EATON: We're not even stopping at  
15 4 and a half. We're moving. Option Number 5 -- Agenda  
16 Item Number 5, the --

17 BOARD MEMBER ROBERTI: Mr. Chairman.

18 CHAIRMAN EATON: I'm sorry.  
19 Senator Roberti.

20 BOARD MEMBER ROBERTI: I'm seeking  
21 recognition so that I can move the proposed regulations

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22 of -- to notice a 15-day comment period with the inclusion

23 of the proposed language for AB 59, the requirement to

24 cease operations, the language being incorporated therein.

25 CHAIRMAN EATON: Would you also like to

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1 include in your motion -- I'm not asking that you do it,  
2 but Mr. Jones had raised the issue of being consistent  
3 with our transfer regs, there's 100 versus 60, and I  
4 thought there was an issue raised as to that. You don't  
5 have to necessarily do that. That's just something I know  
6 that was --

7 BOARD MEMBER ROBERTI: I don't have a  
8 problem with --

9 BOARD MEMBER JONES: I don't have a problem  
10 with that. We'll leave that as a hundred. It's ten truck  
11 loads.

12 CHAIRMAN EATON: I just had it as one of my  
13 notes that it may or -- may be included in some of the  
14 other items that were written. Okay. Senator Roberti.

15 BOARD MEMBER ROBERTI: As I made the  
16 motion, that we go to the 15-day comment period.

17 BOARD MEMBER JONES: I'll second it.

18 BOARD MEMBER ROBERTI: With the inclusion  
19 of the language which we all have --

20 CHAIRMAN EATON: Regarding the AB 59?

21 BOARD MEMBER ROBERTI: Right.

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22 CHAIRMAN EATON: Okay.

23 BOARD MEMBER ROBERTI: And interim permits.

24 CHAIRMAN EATON: Senator Roberti moves,

25 Mr. Jones seconds that we send the proposed regulations,

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1 Item Number 5, regarding construction demolition debris  
2 and waste out for 15-day comment with the inclusion of the  
3 AB 59 material as well.

4 Madam Secretary, please call the roll.

5 BOARD MEMBER PENNINGTON: Before you do the  
6 roll, Mr. Chairman.

7 CHAIRMAN EATON: Yes, Mr. Pennington.

8 BOARD MEMBER PENNINGTON: I just want to  
9 clarify that we will have to take some further action at  
10 the end of the 15-day period; is that correct?

11 CHAIRMAN EATON: I think I have to go to --

12 MS. VILLA: If the Board chooses to take  
13 any substantive comments from that 15-day comment period,  
14 we would have to go out for another subsequent 15-day  
15 comment period. There is a possibility -- we looked  
16 through the timetable here, and if we squeezed it, the  
17 Board could have a Special board meeting to adopt a second  
18 15-day comment period.

19 CHAIRMAN EATON: So we're not voting on  
20 that special Board meeting today.

21 MS. VILLA: You are not voting on that

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22 today.

23 BOARD MEMBER PENNINGTON: However, if the

24 Board does have to take some action to send it to AOL;

25 right?

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1 MS. VILLA: Yes. The Board would have to  
2 adopt the regulations. Today you're just approving a  
3 15-day comment period.

4 BOARD MEMBER PENNINGTON: Thank you. Thank  
5 you, Mr. Chairman.

6 CHAIRMAN EATON: Surely. All right. We  
7 have a motion before us. Madam Secretary, please call the  
8 roll.

9 BOARD SECRETARY: Board Members Jones.

10 BOARD MEMBER JONES: Aye.

11 BOARD SECRETARY: Moulton-Patterson.

12 BOARD MEMBER MOULTON-PATTERSON: Aye.

13 BOARD SECRETARY: Pennington.

14 BOARD MEMBER PENNINGTON: Aye.

15 BOARD SECRETARY: Roberti.

16 BOARD MEMBER ROBERTI: Aye.

17 BOARD SECRETARY: Chairman Eaton.

18 CHAIRMAN EATON: Aye.

19 All right. The hour being late, my  
20 understanding from talking with staff that the only -- not  
21 the only, but there are two items that need to really be

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22 just taken up and they're very quick items. And I believe  
23 that they are Item Number 9 as well as Item Number 11. Is  
24 that correct? And that items 6, 7, and 8, Members, would  
25 be then kicked over or continued to our next meeting on

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1 September 8th. Item Number 9 and then 11. So have at it.

2 SUSAN VILLA: Chairman, Board Members, I'm

3 Susan Villa, Administration and Finance Division, and I'm

4 presenting the item, consideration and approval of

5 selected '99-2000 contract concepts.

6 In June of this year, the Contract Office

7 sent out a request for contract for concepts and from

8 Board Members and staff, and we received over 60 concepts.

9 And before you today are seven of those for your

10 consideration, and these concepts were identified as

11 having some time-sensitive time frames for meeting action

12 to provide continuity of services.

13 Attachment A of your item identifies the

14 concepts. The first one is inventory assessments and the

15 landfill study for \$300,000, the Integrated Waste

16 Management account; the second one is Environmental

17 Laboratory Services and Sampling Services for \$100,000

18 out of the Integrated Waste Management account; the third

19 is the Pilot Illegal Dumping Enforcement program for

20 \$69,750 out of the Integrated Waste Management account;

21 the next is Surveys of Rigid Plastic Packaging Container

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- 22 Processors and Reclaimers, \$60,000 out of the Integrated
- 23 Waste Management account; the next is calculation of the
- 24 denominator generation rate for the 1998 Rigid Plastic
- 25 Package Container All-Container Recycling Rate for \$50,000

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1 out of the Integrated Waste Management account; and next  
2 is the reauthorization of funding of the third year of the  
3 three-year WRAP contract for \$50,000 out of the Integrated  
4 Waste Management account; and the last one is the  
5 reauthorization funding of the third year for Cal-Max,  
6 also for \$15,000.

7 Are there any questions?

8 BOARD MEMBER ROBERTI: Mr. Chairman.

9 CHAIRMAN EATON: Senator Roberti.

10 MS. TOBIAS: You may want to move --  
11 basically just hold on to this item for a second and hear  
12 the next one until we can get Board Members back.

13 CHAIRMAN EATON: We'll go to Item 11 real  
14 quick.

15 MR. O'SHAUGHNESSY: Good evening,  
16 Mr. Chairman, Members of the Board.

17 BOARD MEMBER PENNINGTON: Linda, you  
18 didn't believe me, did you.

19 (Laughter)

20 MR. O'SHAUGHNESSY: Good evening,  
21 Mr. Chairman and Members of the Board. My name is Trevor

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22 O'Shaughnessy representing the Office of Local Assistance.

23 I have a presentation for the award of contract for the

24 development of case studies and the implementation of a

25 video conference, if you would like to hear it.

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1 (Laughter)

2 MR. O'SHAUGHNESSY: Otherwise I'm available  
3 for any questions. This concludes my presentation.

4 BOARD MEMBER ROBERTI: Mr. Chairman, this  
5 guy gets a raise.

6 (Laughter)

7 BOARD MEMBER PENNINGTON: I'll move  
8 adoption of Resolution 1999-03.

9 BOARD MEMBER JONES: I'll second.

10 BOARD MEMBER PENNINGTON: As the former  
11 Chairman, I'll ask you to call the roll.

12 (Laughter)

13 BOARD MEMBER ROBERTI: Who is the Vice  
14 Chairman?

15 BOARD MEMBER PENNINGTON: We don't have  
16 one.

17 BOARD SECRETARY: Board Members Jones.

18 BOARD MEMBER JONES: Aye.

19 BOARD SECRETARY: Moulton-Patterson.

20 BOARD MEMBER MOULTON-PATTERSON: Aye.

21 BOARD SECRETARY: Pennington.

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22 BOARD MEMBER PENNINGTON: Aye.

23 BOARD SECRETARY: Roberti.

24 BOARD MEMBER ROBERTI: Aye.

25 BOARD SECRETARY: Chairman Eaton.

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1 MS. TOBIAS: Absent from the room.

2 BOARD MEMBER PENNINGTON: Former Chair  
3 declares it a pass.

4 BOARD MEMBER ROBERTI: You're the senior  
5 member; aren't you?

6 BOARD MEMBER PENNINGTON: Yes.

7 MR. O'SHAUGHNESSY: Thank you.

8 BOARD MEMBER ROBERTI: While we're in -- I  
9 guess the word is "in session," maybe should I make a  
10 statement.

11 The prior item that was passed involved  
12 RPPCs. We have recently received an opinion from the Fair  
13 Political Practices Commission that I could cast a vote on  
14 RPPCs as regarding the rule of necessity. I had up until  
15 that time refrained from doing so because of stock my wife  
16 owned in three companies.

17 However, we now have a fifth member which  
18 means the rule of necessity does not apply and the  
19 question then is, do I have a conflict. That's impossible  
20 to deduce at this point since the FPPC indicates that the  
21 conflict on this kind of item in an indirect item deals

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22 with a certain amount of dollars, and we cannot deduce at  
23 this time whether the companies effected would be effected  
24 to that amount of money. Hence, prudence being the better  
25 part of valor, I choose to recuse myself on this item.

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1           I think I have to mention the names of the  
2 companies according to FPPC regulations. They are General  
3 Electric, Avon and Gillette. I have received no  
4 advisement that Colgate-Palmolive is involved, which for  
5 purposes of openness, I avoided that name as well. With  
6 that, I will recuse myself and go into the audience.

7           CHAIRMAN EATON: All right.

8           BOARD MEMBER PENNINGTON: Mr. Chairman.

9           CHAIRMAN EATON: Mr. Pennington.

10          BOARD MEMBER PENNINGTON: I'll move  
11 adoption of Resolution 1999-393.

12          BOARD MEMBER JONES: Second.

13          CHAIRMAN EATON: Mr. Pennington moves,  
14 Mr. Jones seconds we adopt Resolution 1999-393.

15          Madam Secretary, please call the roll.

16          BOARD SECRETARY: Board Members Jones.

17          BOARD MEMBER JONES: Aye.

18          BOARD SECRETARY: Moulton-Patterson.

19          BOARD MEMBER MOULTON-PATTERSON: Aye.

20          BOARD SECRETARY: Pennington.

21          BOARD MEMBER PENNINGTON: Aye.

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22 BOARD SECRETARY: Roberti.

23 Chairman Eaton.

24 CHAIRMAN EATON: Aye.

25 Thank you.

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1           BOARD MEMBER PENNINGTON: Mr. Chairman, in  
2 your absence we voted on Resolution 1999-03. I think you  
3 could vote.

4           CHAIRMAN EATON: That will be an "aye"  
5 instead of an "I-I."

6           (Laughter)

7           CHAIRMAN EATON: That matter passes.

8           BOARD MEMBER PENNINGTON: Inert I?

9           CHAIRMAN EATON: Is Mr. Desrochers still  
10 here? No. Public comment.

11          Ladies and gentlemen, all of you have left  
12 and I know some of your ghosts are still here. Thank you  
13 for your patience. Board Members, thank you for your  
14 engaging activities this afternoon and this morning, and  
15 thank you again. We'll see you next week on the 8th.

16          This meeting stands adjourned.

17                   \* \* \*

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4 I, Terri L. Emery, CSR 11598, a Certified  
5 Shorthand Reporter in and for the State of California, do  
6 hereby certify:

7 That the foregoing proceedings were taken  
8 down by me in shorthand at the time and place named  
9 therein and was thereafter transcribed under my  
10 supervision; that this transcript contains a full, true  
11 and correct record of the proceedings which took place at  
12 the time and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest  
16 in the event of the action.

17

18

19 EXECUTED this 9th day of October, 1999.

20

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